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CHINA'S ENVIRONMENTAL LEGISLATION AND CURRENT ISSUES

Luo, Dian Rong*

BACKGROUND

The development of environmental legislation in China is perhaps 15 to 20 years behind that in many other countries. This is because the development of China's modern industry started nearly one century later than that of industrially developed nations. After the founding of the People's Republic of China, during the 1950s and 1960s, the People's government made great efforts in the construction of water conservancy and irrigation projects; soil improvement; soil reclamation; preservation of land and forests; and grasslands improvements. A series of laws and regulations governing the conservation of natural resources were made public during this period.

From the late fifties onward, as a result of the interference and influence of "leftism" in guiding political thought, pollution and other dangers of modern industry were neglected. Especially during the time when the "gang of four" partially usurped political power, it was impossible to properly address these problems. The late premier Zhou En-Lai, acting against pressure from the "gang of four", sent a delegation to participate in the Conference on the Human Environment held by the United Nations in Stockholm in 1972. During this conference, the analysis of the questions of pollution and destruction of the environment and effective methods and approaches for their solution presented by all representatives helped raise our consciousness of these issues and promoted our environmental protection work.

In August 1973, our government held the first national environmental protection conference, at which the policy on environmental protection was worked out. Meanwhile, in accordance with the specific requirements of environmental protection, the conference drafted the document, "Some Regulations on Environmental Protection and Improvement"

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(trial draft), which was to be transmitted throughout the country by the State Council. In 1974, a Leading Group on Environmental Protection was set up under the State Council to implement the trial draft. Within the draft, the range and task of environmental protection and relevant measures were principally defined. It served, in fact, as the embryo of the subsequent "Environmental Protection Law of the People's Republic of China (trial implementation)" (1979).

DEVELOPMENT OF ENVIRONMENTAL LEGISLATION

Since the downfall of the "gang of four", especially after the Third Plenary Session of the Eleventh Central Committee of the Communist Party of China was convened, the construction of our socialist legal system has resumed and progressed rapidly. At the same time, the development of our environmental law has been placed on the agenda. Section 11 of the Constitution of 1978, adopted at the first meeting of the Fifth National People's Congress, stipulated that "the state protects the environment and natural resources and prevents and eliminates pollution and other public nuisances." Regarded as a prominent matter, environmental protection was included in the Constitution for the first time (there are now about 22 countries that have included environmental protection provisions in their constitutions).

"The Forests Law (trial implementation)", adopted on February 23, 1979, at the Sixth Session of the Standing Committee of the Fifth National People's Congress, sets the regulations and principles for planting, cutting, and managing forests. After several years of implementation, the Seventh Session of the Standing Committee of the Sixth National People's Congress revised the law on September 20, 1984, and perfected its regulations for forest resources protection.

On September 13, 1979, the Eleventh Session of the Standing Committee of the Fifth National People's Congress adopted the "Environmental Protection Law of the People's Republic of China (trial implementation)", the first fundamental environmental law promulgated in accordance with the provisions of the Constitution of 1978 on environmental protection. This law defines major issues such as national policy and basic principles, the object and scope of environmental protection, the major requirements and measures for conserving the natural environment and preventing pollution, the establishment of environmental management agencies and their duties, as well as the use of rewards and punishments. The law also makes use of several major regulatory approaches, such as the environmental impact evaluation system; polluters' responsi-

bilities for controlling pollution; the system of paying discharge fees; and the system of "three at the same time" in capital construction, which says that environmental facilities should be designed, constructed, and operated at the same time as the main facilities. The creation of this trial implementation law marks the entrance of our system of environmental protection law into a new stage of development, a major step forward in establishing an environmental legal system.

On December 13, 1981, the Fourth Meeting of the Fifth National People's Congress adopted the "Decision on the Launching of a National Movement of Voluntary Tree Planting", calling for widespread voluntary tree planting throughout our country. On November 19, 1982, the 25th Session of the Standing Committee of the Fifth National People's Congress passed the "Cultural Relics Preservation Law" which provides legal protection for well known areas and historical sites by defining these places as objects of environmental protection. Meanwhile, the Standing Committee of the Fifth National People's Congress also adopted the "Food Sanitation Law (trial implementation)". It contains many particular regulations on preventing food contamination and injury to health by hazardous elements.

On December 4, 1982, the Constitution of 1978 was re-enacted with some modifications to Articles 9 and 26, which stipulate that "the State ensures the rational use of natural resources ...," "the encroachment on or damage to natural resources by any organization or individual by whatever means is prohibited", and "the State protects and improves the living environment and the ecological environment and prevents pollution and other public nuisances." In addition, it sets other rules for preserving forests and encouraging reforestation, conserving rare animals and plants, preserving famous areas and historical sites, and making rational use of land. Overall, the provisions on environmental protection in the new Constitution are much more comprehensive, concrete, and complete than those of the 1978 Constitution.

"The Marine Environmental Protection Law of the People's Republic of China" was adopted on August 23, 1982 and took effect on March 1, 1983. It contains provisions covering prevention of damage to the marine environment and adopted the principle of liability irrespective of negligence (strict liability), which is applied by many other countries to assign responsibility for damages. Apart from either exceptional circumstances listed in Article 43 (like war, an act of God, negligence or wrongful acts on the part of departments responsible for the maintenance of beacons or other navigational aids) or a third party's responsibility, any units or individuals who

cause marine pollution shall be liable for damages without regard to whether the pollution is caused by intention or by negligence. It also strengthens the administrative powers of the relevant departments in authority to issue warnings to or impose fines on the violator, make the violator pay discharge fees or clean-up costs, or compensate injury to the state. An opposing party may file suit in the People's Court within fifteen days of receiving notice of the administrative decision. If by the expiration of this period suit has not been filed, nor has compliance occurred, the authority concerned shall request the People's Court to enforce the decision in accordance with the law.

"The Water Pollution Prevention and Control Law of the People's Republic of China" was adopted on May 11, 1984, at the 15th Session of the Standing Committee of the Sixth National People's Congress. It consists of six chapters and 46 articles. Very strict limits are fixed for pollutants discharged in waste water. Article 18 of the "Environmental Protection Law" provides for pollutant discharge fees only for effluents exceeding national discharging standards, while Article 15 of the "Water Pollution Prevention and Control Law" stipulates fees must be paid for discharges until the pollution ceases, with excess pollution resulting in additional fees. Article 38 provides that enterprises and institutions causing severe pollution which fail to remedy the situation as required within the period specified, in addition to paying double or higher excess discharge fees in accordance with national regulations, may also be fined by the Environmental Protection Agency (EPA), or ordered to suspend or close down operations by provincial, municipal, or county governmental authorities. The chapter on legal liability also adopts the principle of strict liability. Article 41 reads, "the unit causing harm from water pollution has the responsibility to eliminate the hazard and compensate units or individuals suffering direct losses."

From this regulation it can be seen that units creating water pollution hazards shall bear the legal liability for compensating losses, regardless of subjective intent or fault. Actions in violation of this law shall be punishable either by warnings or fines by the competent environmental protection or transportation department. In serious cases the individuals held liable shall be subject to disciplinary sanctions by their own units or higher competent authorities. For violations leading to serious public or private property losses, serious bodily harm, or death, the responsible party may be prosecuted for criminal liability under Articles 115 or 187 of the "Criminal Law of the People's Republic of China."

On September 5, 1987 the 22nd Session of the Standing Committee of the Sixth National People's Congress enacted the

"Air Pollution Prevention and Control Law." This law took effect on June 1, 1988.

In recent years the State Council has issued or transmitted dozens of rules and regulations on environmental protection. The most important of these include: "Noise and Sanitation Standards for Industrial Enterprises" (1980), a "Decision on Strengthening Environmental Protection During the Period of National Economic Adjustment" (1981), "Provisional Measures for Imposing Discharge Fees" (1982) and "Management Guidelines on Environmental Protection of Construction Projects" issued by the national EPA on March 26, 1986. Other important enactments are the "Grasslands Law of the P.R.C." adopted by the 11th Session of the Sixth People's Congress on June 18, 1985 (effective Oct. 1, 1985); the "Fishing Laws" adopted by the 14th Session on January 20, 1986; and the "Mineral Resources Law" adopted on March 19, 1986 (effective Oct. 1, 1986); and the "Land Management Law" adopted by the 16th Session on June 25, 1986 (effective Jan. 1, 1987). Additional regulations presently being drafted include: the "Environmental Noise Control Law", the "Wildlife Protection Law", and "the Regulations on Nature Conservation Areas." Efforts are also being made to revise the "Environmental Protection Law (trial implementation)".

NEXT STEPS

The situation outlined above shows that environmental legislation is proceeding rapidly in our country. It may be reasonably stated that a skeletal system of legal protection for the environment has taken shape. Nevertheless, existing legislation does not yet cover all fields, and enforcement mechanisms need to be clarified. The main task presently facing those concerned with environmental protection is to evaluate Chinese experience to date and continue to study the experience in other countries. In this way we can establish a more perfect system of legal protection for the environment consistent with Chinese characteristics and according to the requirements of our nation's conditions.

Since China is still a developing country with relatively backward science and technology, weak economy, and limited financial sources, it is very important to speed up the development of our environmental legislation and improve the environmental legal system according to Chinese characteristics. As everybody knows, much of China's environmental troubles relate to lack of or insufficient management. To strengthen and improve environmental management, the prerequisite of a well-developed environmental legal system must be estab-

lished. In order to accomplish these tasks, the following matters must be taken into consideration:

1. Wrong ideas implanted in the mind should be removed in order to raise the awareness of environmental protection and strengthen the management of the environment by means of laws. The feudal society lasted more than two thousand years in China, and the feudal ideas and customs of paternalism are deeply rooted. Also, because the P.R.C. originally followed the heavily centralized model of government found in some other countries, the officials at all levels of authority would like to follow their boss's orders for their jobs and don't want to follow the laws; and the heads or managers of institutions or enterprises like to issue their own orders and don't want to check the laws.

Two years ago, there was an article in the *People's Daily* entitled, "What Made the Factory Director Resign?". It reported that a factory built a shaping workshop and got a prize of "all excellence" for the new building. But pollution control facilities were not designed, built, and operated at the same time as the workshop, and the noise level of the workshop exceeded the national standard. The EPA therefore imposed fines on the factory according to the law. "It is killing without teaching in advance," the factory director complained and then resigned to protest the punishment (*People's Daily*, Aug. 15, 1985). In the director's mind, there was no such standard as legal or illegal. What he was willing and obliged to accept was but the direct order or scolding from his administrative superiors. That is what he meant by "teaching."

As another example, on April 23, 1985, there was a boiler explosion at a factory in Tian Jing. Four boiler rooms were destroyed, one worker killed, and two injured. The economic loss was RMB 85,000. The accident occurred because the administrative managers did not follow the "three at the same time" requirement when rebuilding the factory in 1981. When asked why the procedure was not followed, the secretary of the town government, Mr. Zhang, answered that they had never heard of this requirement (*China Environment*, July 16, 1985).

Since the "Environmental Protection Law (trial implementation)" was published in 1979, the government at all levels, as well as the organizations concerned, have publicized environmental protection and environmental laws widely. In recent years, a basic legal education program has been launched for all citizens in the country. The awareness of managing the environment by means of law is much more widespread now, and the practice is more accepted. Nevertheless, there are still some administrators, directors, or managers of enterprises adhering to the idea of using only administrative orders.

Such attitudes not only obstruct the enforcement of the law, they also affect the further development of more complete legislation. Without learning through the implementation of the existing environmental laws and norms, how can we talk about the further improvement of environmental legislation? So, the first step is to raise the environmental protection awareness of all the administrative management personnel and factory directors or managers, and to strengthen their understanding of environmental management by means of laws. We must operate according to laws and regulations that are derived from policies of economics and technology. We must normalize administrative management procedures and shift from reliance on administrative measures to the management of the environment by means of laws. Only in this way can we thoroughly sweep off the ideological obstacles in the way of implementing the existing environmental laws and regulations, and also pave the way for further improvement in our environmental legislation work as well.

2. The State Council should, while not contradicting the Constitution and other laws, exercise at its disposal the full range of its powers to establish administrative regulations; and the provinces, autonomous regions, and municipalities—under the direct leadership of the central government—should, without violating the Constitution, laws, and administrative regulations, strengthen efforts to publish local regulations. The autonomous regions also are empowered to issue their respective and particular regulations.

Ours is a broad and large country with a huge population, but the development of culture and economies varies in different areas. Situations, conditions and nationalities differ greatly. Now that reformation of the economic system is spreading all over the country, increasing the need for policy changes and new regulations, the legislative work of the People's Congress and its standing committee is becoming very heavy. Moreover, the laws enacted by the People's Congress and its standing committee cannot cover all details of Chinese society. Therefore, the state council, the provinces, and autonomous regions and municipalities—under the direct leadership of the central government—are authorized to make much more detailed and applicable administrative regulations or local regulations. The major national legislation must be comparatively stable. At the same time, social life is constantly advancing, and the economic structure is again in rapid change. Local matters raise new questions. To solve those new questions is very important for local development. Administrative regulations and local regulations are more flexible and adaptable. So, it is of great importance to bring into full play

the functions of the State Council, the provinces, autonomous regions, and municipalities under the direct leadership of the central government in making administrative or local regulations; to allow environmental legislation to reflect itself in the administrative or local regulations in order to realize full management of the environment; and to provide necessary laws and regulations for practical guidance. In so doing we could broaden our experience, and speed up the development of our environmental legal system.

3. Legal education should be carried on among the environmental professionals and managers so that, in addition to their economic and technical expertise, they also will be able to manage by means of laws. Environmental management is a comprehensive task: it requires both knowledge in science, technology and engineering and knowledge in administration, economics and laws. That is also true for environmental legislators. Presently, we have very few people in the environmental law field in our country. Furthermore, among those engaged in environmental work, very few have legal knowledge. We need people who have both management and legal knowledge to enter the environmental management profession. We also need to educate those already involved in various kinds of environmental work to understand legal knowledge so that they understand how to manage according to the environmental legal system.

The development of environmental legislation relies on the accumulation of Chinese experiences. Foreign experiences can be of reference, but never copied. As those directly participating in environmental management with both knowledge in law and management gather and refine their work experiences, they may have much more result with less effort. In this way, they will make an important contribution in perfecting our environmental legislation and building up the environmental legal system according to Chinese characteristics.