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# **A FEW PROBLEMS IN ENVIRONMENTAL PROTECTION LEGISLATION IN CHINA**

**Wang, Wei Min\***

Environmental legislation in China has a long history. As early as 2000 years ago, the West Zhou Dynasty issued "The Order for Protection of Waterbodies and Forestry," which required protection of water and forests—the environmental elements on which people rely. However, until recently very little other environmental legislation was enacted. On September 13, 1979, the "Environmental Protection Law of the P.R.C." was promulgated. It divided environmental protection legislation from other laws in an effort to form its own system. This paper focuses on a few of the problems existing in environmental protection legislation in China.

## **CHINESE ENVIRONMENTAL PROTECTION LEGISLATION SYSTEM**

The Chinese socialist legal system is unified and organically connected by different legal departments categorized by modern legal standards. Environmental protection laws are a part of the system, yet the laws are also a system within itself. Chinese environmental protection legislation includes the following contents.

From a vertical point of view the system has a few levels:

1. *General law of environmental protection.*

The "Environmental Protection Law of the P.R.C.," promulgated by the standing committee of the National People's Congress, adjusted all the major problems in environmental protection, and continued to play a role of basic law in environmental protection.

2. *Special laws of environmental protection.*

These are laws made specifically for a certain demand of the environment or on objects which need to be adjusted. They

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\*The Chief of Legal Affairs Section, Ministry of Construction

are promulgated by the Standing Committee of the National People's Congress. Examples of these laws are the Marine Environmental Protection Law of the P.R.C. and the Water Pollution Control Law of the P.R.C.

3. *Administrative laws of environmental protection.*

These regulations, promulgated by the State Council with respect to environmental protection, include Temporary Regulations on Imposing Pollution Discharging Fees, and Managing Guidelines of Preventing Marine Pollution from Vessels. These administrative regulations are even more detailed and specific than special laws, and they play an important role in the environmental protection laws.

4. *Department regulations and rules made by the different departments of the State Council for environmental protection.*

These include regulations made by the EPA, the EPA and other departments together, or just the departments.

5. *Local laws and regulations of environmental protection.*

These are promulgated by the people's congress and its standing committee of different provinces, autonomous regions, municipalities directly under the central government, capitals of provinces, and big cities.

6. *Local guidelines of environmental protection.*

These are made by the people's governments of provinces, autonomous regions, municipalities directly under the central government, capitals of provinces, and big cities.

Local laws, regulations and guidelines may apply in the same area, i.e., they are effective in their own jurisdictions. The only difference is that they are promulgated by different authorities. Presently, more than one hundred local laws and regulations have been made by different provinces, autonomous regions, and municipalities.

From a horizontal point of view, the system of Chinese environmental protection laws is involved and intertwined with many other laws. In general, there are two situations:

1. *In some laws and regulations there are stipulations on environmental protection, such as the Temporary Rules for State-Owned Industrial Enterprises issued by the State Council. Article 20 of the Rules stipulates that authorities may invoke penalties against those who violate the state environmental protection law by seriously polluting the environment and making pollution impossible to be controlled, those who fail to control the pollution within the specified time, and those who refuse to control pollution when the requisite technology is available. The authorities make the penalty decisions according to their jurisdictions, or they approve the applications submitted by the concerned parties to close down the*

factories, stop operation completely, merge with other factories, switch to the manufacture of other products, or move the factories to new locations.

2. *There are some laws and regulations in the fields of natural resources management*, such as the Forest Law of the P.R.C., the Grassland Law of the P.R.C., the Mineral Resource Law of the P.R.C., and the Fishery Law of the P.R.C. Although these laws are different from special environmental protection laws, they are to a certain degree playing a role of protecting and improving the environment. Therefore, these laws are a part of the system of Chinese environmental protection.

From a general point of view, the Chinese environmental protection law system is a harmonized and completed system consisting of various legal standards which connect, restrict and complement each other. These standards all have the purpose of protecting and improving the environment. The system articulates, standardizes, formalizes and legalizes the Chinese environmental protection policies, guidelines, basic principles and effective management regulations. The management regulations which are included in the system are: the system of environmental impact statements, the system of "three at the same time" and its check and acceptance, the system of pollution sources registration, the system of imposing fees on pollution discharges, the system of controlling pollution within a specific time, the system of contingency plan enforcement, and the system of on-spot inspections. Each of the laws and the legal regulations of the system regulates itself and determines its own scope of operation. This combines the general laws with special laws, and principles with real conditions. This combination solves the problems that the general laws do not embody, since they are mostly policies and principles, while special laws are normally complex or even conflicting with each other. The system clarifies the duties of government on each level and fixes the way that the EPA's unified supervision and management combines with the field management of concerned authorities, solving the difficult problem of unified management and fields management. The system stipulates the legal responsibilities for civil, criminal and administrative violators and the respective dispositive procedures. The system also dictates the amount of judicial review on administrative, strict liability and criminal cases. All these stipulations combine the special laws with administrative, civil, criminal and procedural law. This solves the relationship problem between administrative departments and judicial organs, and it prepares conditions for the enforcement of each environmental protection law, regulation and rule.

## **GUIDING IDEOLOGY OF CHINESE ENVIRONMENTAL PROTECTION LEGISLATION**

The general guiding ideology of Chinese environmental protection legislation is to follow the Constitution and to be practical and realistic. The following guidelines describe this more specifically.

### **STATE POLICIES SHOULD BE FULLY SET FORTH IN WRITING**

The Chinese environmental protection legislation should not only describe the four basic principles and the general policy of reformation, opening and making the work lively, but also set forth the environmental protection policies. The primary guidelines are: making broad plans and rational layouts, using comprehensive usage to turn bane into boon, relying on the people and encouraging them to protect the environment for their benefit. Policies include economic, urban and environmental construction development simultaneously, and the other policies of "three at the same time" and "let polluters control".

There are policies which will not be upgraded to become laws, but there are no laws which do not reflect policies. Chinese environmental protection work is gradually undergoing a transformation from reliance purely on policies to upgrading some good policies into laws if the practice proves they are correct. In this fashion, the environmental protection law system will be completed and carried out according to the laws.

### **THE PROCESS FROM THE VIEWPOINT OF ACTUAL CONDITIONS**

A law must be in accordance with the country's actual conditions to be practical and to promote the development of society and economy. The Chinese environmental protection legislation is carried out in view of the following conditions:

1. *The country's condition.*

China is a developing socialist country with more than one billion population, a comparatively backward economy and technology, and a low standard of living. China is geographically large with complex natural conditions. The population and economic development is not evenly distributed throughout the country. China is now implementing reformation in the fields of economy and political science.

2. *Environmental conditions.*

In recent years, Chinese environmental protection has progressed rapidly. The environmental degradation conditions in some places have been improved or controlled. How-

ever, the condition of Chinese environmental pollution is still below acceptable standards and is a very serious problem.

3. *As a new legal discipline, the environmental legislation lacks both systematic theoretical study and practical experiences.*

In consideration of the above conditions, possibility should be combined with necessity. Legislation should not be enacted until the right conditions are available. These conditions should be actively prepared, and laws should be enacted when the experiences are gained.

### **RELYING ON THE PEOPLE**

Environmental legislation in China combines the efforts of state organs, experts, scholars and the common people. Opinions from all walks of life are collected and after much consultation a final decision is made by unifying these different opinions. The normal process is to reflect the opinions of the people's discussions, then print the opinions and distribute them to the department concerned for their review. Finally, the opinions and the comments will be analyzed and amended by experts and scholars.

### **STUDYING FOREIGN EXPERIENCES**

Environmental problems are common to every country in the world. Learning the environmental experiences of foreign countries is both an easy and necessary way to gain insights into these problems. Our study consists of two broad concepts. One concept is comparable foreign legal standards or the technical contents, and the other concept reflects the relationship between humans and nature. Certainly, the study should be flexible to fit the conditions of China.

## **PROCEDURE OF CHINESE ENVIRONMENTAL PROTECTION LEGISLATION**

The procedure of Chinese environmental protection legislation is being completed step by step, and is going to form a system. Presently, a law from draft to promulgation will go through the following procedures:

### **PROPOSE A DRAFT RESOLUTION, INCLUDING DEPARTMENT DRAFTING AND THE STATE COUNCIL EXAMINATION**

#### 1. *Department drafting*

(a) Make a five-year plan with the next year's legislation in mind to carry out the work in step by step manner with the focal points accented;

- (b) Organize a drafting group to perform the work;
- (c) Make careful investigations and studies to collect data and legal stipulations both at home and abroad;
- (d) Prepare the program primarily for drafting the terms and articles;
- (e) Collect opinions from departments concerned and local EPAs;
- (f) Hold discussions by experts from all walks of life to exchange ideas and make amendments;
- (g) Submit to the State Council the amended draft which should be signed by the leader of the ministry concerned.

2. *The State Council examination*

a. The law bureau will examine the draft on behalf of the State Council by distributing the draft to concerned departments and the local people's governments for their comments. The opinions will then be coordinated, views exchanged with the drafting department, and the draft amended. This procedure is repeated several times before the final draft is completed.

b. The standing committee of the State Council examines the law draft submitted by the law bureau. After discussions and approval, the draft becomes a motion signed by the Premier and will be submitted to the standing committee of the National People's Conference.

**EXAMINATION AND APPROVAL OF THE LAW DRAFT DOES NOT HAVE TO BE DONE BY THE STANDING COMMITTEE OF THE NATIONAL PEOPLE'S CONFERENCE IN TWO SESSIONS**

1. *After the full session conference of the standing committee approves the listing of the draft into the agenda, the leader of the drafting department will explain the law draft. The members of the committee will examine and approve the draft in groups, and then submit it to the law committee of the National People's Congress for examination.*

2. *The law committee distributes the law draft for comments to provinces, autonomous regions, municipalities directly under the central government, and concerned ministries. The committee also carries out investigations in a few places, and listens to the opinions of the people and concerned entities. The committee then analyzes and studies the data and the comments, amends the law draft, and reports to the next session of the standing committee.*

3. *After listening to the report from the law committee, the standing committee of the National People's Conference will discuss the draft in groups. The law committee amends the draft with the drafting department. The result will be further examined and approval by joint group representatives.*



### **PROMULGATE LAW**

The amended law draft will be submitted to the full session conference of the standing committee of the National People's Conference for voting. If there is a quorum vote in favor of the draft, the law is passed.

### **PUBLISH LAW**

After the law is passed, it is not published until the chairman of the country gives the order.

The procedure of Chinese environmental protection explains that the laws are promulgated under the condition that opinions from departments of the State Council, local governments and the standing committee of the local people's conferences are collected, repeated analysis is made by experts and scholars from all walks of life. There is a strict examination by the law committee of the National People's Conference, and the full session discussions of the standing committee of the Conference are processed. A procedure such as this is a legal one and it reflects the will of the people.

## **CHINESE ENVIRONMENTAL PROTECTION LAWS ATTEMPT TO HARMONIZE RELATIONS BETWEEN VARIOUS SOCIAL FACTIONS**

Environmental protection laws are made to appease various social ideas about the protection and improvement of the environment. The laws are involved in many aspects, and, therefore, the social relations which need to be adjusted are very complex. The harmonizing work should be done during the legislative process. The work can be summed up in the following two thoughts.

### **HARMONIZING THE RELATIONSHIP BETWEEN ENVIRONMENTAL PROTECTION LAWS AND OTHER LAWS**

Two divergent principles should be considered. First, each law should have its own particular emphasis, and redundancy should be avoided. Second, laws should be linked together to keep the unity of the laws. For example, in the environmental protection law system, legal responsibility stipulates judicial review of administrative cases, criminal analogies and "contrast" terms are used, and administrative settlement for environmental disputes is provided. In this way, the environmental protection laws are in harmony with administrative, civil and criminal law.

## **CORRECTLY HANDLING THE RELATIONSHIP BETWEEN GOVERNMENT DEPARTMENTS**

The standing committee's working report, adopted by the second session of the Sixth National People's Conference, points out that administrative departments' responsibilities and rights should be authorized after broad considerations. For the methods of unified management and separate management to be handled correctly, those situations that need to be managed uniformly must be done in that manner, while those which need to be managed by a separate department or authority should be given to that department for their attention. The key principle in our environmental protection legislation is to consider both sides of the issue.

It is important to clarify that unified managing agencies and special managing agencies are all managing authorities, but with a different scope and rights. The EPA undertakes unified management on environmental protection. Without the EPA's unified supervision and management, environmental policies and laws could not be maintained. However, if the EPA attempted to manage all situations without using separate managing departments, the results would not be satisfactory due to a lack of personal attention by the EPA. Besides, when the scope and rights of unified management and separate management are designated, equality between departments should be attained. Various ways should be used to consult with each other, so that environmental protection laws reflect the interests of both unified management and separate management.

## **LAW DRAFTING ORGANIZATIONS OF CHINESE ENVIRONMENTAL PROTECTION LEGISLATION**

Chinese environmental protection laws are drafted by groups organized by the state EPA. The drafting work includes data collection, investigation, outlining, terms drafting, soliciting opinions, discussing and amending. This is the basic work of legislators who directly influence the quality and progress rate of the work. Experience shows that environmental protection legislation has the following features:

1. *It Has a Strong Sense of Policy.* Laws are standardized and policies specified.

2. *It Has a Strong Sense of Specialization.* Environmental protection legislation is set up as a special field in the country's legislative system as a way for the country to strengthen the management of environmental laws and policies.

3. *It Has a Strong Sense of Science and Technology.* Legislation should not only use legal science, but also the natural sciences to influence decisions.

4. *It Has a Strong Sense of Logic.* Legislation is not routine administrative work; it needs logical research, analysis, abstraction, and summarization to be effective and flexible for various circumstances.

5. *It is Very Comprehensive.* Environmental protection legislation concerns and is influenced by management, natural science, technology, and legal science. It is a comprehensive work which mixes logic with practice, thereby having procedural law as an integral part of the legislation. Therefore, the drafters should know policies, understand the laws, be good practitioners, and have some knowledge of science and technology. Nevertheless, there are presently very few people who are so qualified. People from managing departments have knowledge of professional management, but are not aware of the requirements of legislation. People from legal research and education normally understand law and are familiar with legislative work, but lack science and management knowledge. Technical people do not have experience in management and law. When environmental protection laws were drafted, we organized administrators, lawyers and technical workers together. In this way, we were able to give full play to these three types of professional knowledge and skill and, hopefully, avoid their shortcomings. The group worked as a team and provided a better quality of legislation. On the other hand, legal researchers and educators would attain new knowledge from the investigation, and they would use this knowledge in their education and studies to make their work better.