

## COUNTRY REPORT: THE PEOPLE'S REPUBLIC OF CHINA

### Criticism Levelled at China's Revised Environmental Protection Law

NENGYE LIU\*

#### Introduction

China's economy has been booming since the Chinese Government adopted its open door policy in 1978. Pan Yue, the vice-Minister of China's Ministry of Environmental Protection (MEP), points out that many developing countries require a hundred years to achieve the level of industrialization that China has undergone in the last twenty years. But the miracle may end soon.<sup>1</sup>

China's focus on rapid economic development has led to widespread environmental degradation. The World Wildlife Fund (WWF) indicates that China is facing serious environmental problems. These include habitat and biodiversity loss, water pollution, air pollution, desertification and erosion. A quarter of all the species listed as critically endangered by the *Convention on International Trade in Endangered Species (CITES)*, are found in China. Respiratory and heart diseases related to air pollution are the leading cause of death in China. About 40% of the water in the country's river systems has a quality index of 3 or worse, meaning that it is unfit for human consumption. Desertification has already swept over almost 30% of China's land area. Every year, this area increases by about 2,460 km<sup>2</sup>.<sup>2</sup>

China adopted its first *Environmental Protection Law (EPL)* in 1979, just one year after the beginning of China's economic reform and open door policy. In 1989, the *EPL* was amended and has never subsequently been. Over the last two decades, a series of environmental laws have been enacted, including the *Marine Environment Protection Law*, *Water Law*, *Air*

---

\* Postdoctoral Fellow, Walther Schuecking Institute for International Law, Christian Albrechts University of Kiel, Germany. E-mail: [nengye.liu@gmail.com](mailto:nengye.liu@gmail.com). The author was a visiting scholar at School of Law, University of Dundee, United Kingdom during the period of writing this report. The author would like to thank the Law School and its faculty members, especially Elizabeth Kirk, Senior Lecturer in Dundee Law School for their generous support.

<sup>1</sup> SPIEGEL Interview with China's Deputy Minister of the Environment, 'The Chinese Miracle Will End Soon' (available at <http://www.spiegel.de/international/spiegel/spiegel-interview-with-china-s-deputy-minister-of-the-environment-the-chinese-miracle-will-end-soon-a-345694.html>).

<sup>2</sup> Environmental Problems in China (available at [http://wwf.panda.org/who\\_we\\_are/wwf\\_offices/china/environmental\\_problems\\_china/](http://wwf.panda.org/who_we_are/wwf_offices/china/environmental_problems_china/)).

*Pollution Prevention and Control Law, Water Pollution Prevention and Control Law, Noise Pollution Prevention and Control Law, Promotion of Recycling Economy Law* and the *Environment Impact Assessment Law*. It is fair to say that China has already established a legal regime for the protection of environment. However, 30 years after its last amendment, the *EPL* is now outdated. A proposal for amending the 1989 *EPL* was first submitted to China's National People's Congress in 1995. From 1995 to 2011, 78 proposals were submitted to the National People's Congress, calling for the amendments of the 1989 *EPL*. The Environment Protection and Resources Conservation Committee of the Standing Committee of the National People's Congress did an assessment of the implementation of 1989 *EPL* from 2008 and 2010. The Standing Committee of the National People's Congress decided to start the process of amending the 1989 *EPL* in 2011. On 31 August 2012, the National People's Congress published the draft of the revised *EPL* (proposed new *EPL*). After a month of public discussions, a final draft will be submitted for the hearing and approval of the General Assembly of the National People's Congress in 2013. This means a new Chinese *EPL* is likely to be adopted in the near future.

This Country Report focuses on this latest draft of the *EPL*. It provides details about the amendments and their legal implications.

### **The Proposed New *EPL***

The proposed new *EPL* consists of 7 chapters and 47 articles which deal with: (1) General Principles; (2) Environmental Management; (3) The Protection and Improvement of the Environment; (4) Prevention and Control of Pollution and other Hazards; (5) Supervision and Inspection; (6) Liabilities; and (7) Miscellaneous. Compared to the 1989 *EPL*, there is a new chapter 5 about "Supervision and Inspection", which intends to improve Government's power in respect of environmental protection.

Chapter 1 identifies the objectives of the new *EPL* (article 1), the definition of "environment" (article 2), applicable scope of the *EPL* (article 3) and the competent authority (the Ministry of Environmental Protection) to enforce the *EPL* (article 7). These articles are almost identical to corresponding provisions of the 1989 *EPL*. Article 4 of the 1989 *EPL* provided that the plans for environmental protection must be incorporated into the national economic and social development plans; and that the State must adopt economic and technological policies and measures favourable for environmental protection so as to coordinate the work of environmental protection with economic construction and social development. At the time

of the development of the 1989 *EPL*, the Chinese Government believed that economic development should be prioritized.

A shift in approach is reflected in the proposed new article 4 of the *EPL* where it is clearly stated that environmental protection shall rely on developments of science and technology, promote a circular economy and conservation culture. An enhanced monitoring regime is also provided for. In order to maintain a balance between socio-economic development and environmental protection, the State shall take economic and technological measures that recycle resources, protect the environment and improve the harmonization between humans and nature. It is also emphasized that the State shall establish an ecological restoration scheme.

The title of the new Chapter 2 has been changed from “Environmental Supervision and Management” (1989 *EPL*) to “Environmental Management”. There is also a new chapter 5 on “Supervision and Inspection”. Article 9 of the 1989 *EPL* only mentions that the Ministry of Environmental Protection under the State Council shall establish the national standards for environment quality. The proposed article 9 of the new *EPL* on the other hand, contains a requirement that the Ministry of Environmental Protection shall ensure that national standards for environmental quality coincide with the objectives of environmental protection. Moreover, prior to the adoption of environmental standards, the Ministry of Environmental Protection must consult with other relevant departments (article 10). It is provided by the 1989 *EPL* that the Ministry of Environmental Protection shall establish a national environmental monitoring system. Article 11 of the proposed new *EPL* further provides that an environmental monitoring network shall consist of the environmental quality monitoring network and a network that monitors the discharge of major pollutants. Data collected by the environmental monitoring network shall be entered into a database system to be used for the assessment of the quality of environment.

Article 12 of the proposed new *EPL* provides additional details about the adoption of a *National Plan for Environmental Protection*. The *National Plan for Environmental Protection* must be drafted by the Ministry of Environmental Protection according to the *Socio-Economic Development Plan*. The draft *Plan* must be reviewed by the National Development and Reform Commission and approved by the State Council. For the prevention and control of pollution and damage to the environment that involve various administrative areas, local governments must cooperate with each other to take action. Moreover, article 14 of the proposed new *EPL* provides that in river basins and key environmental protection areas that

involve various administrative areas, pollution prevention and control actions must be carried out based on prior environmental protection plans approved by the State Council.

Article 19 in Chapter 3 of the 1989 *EPL* only mentions that measures must be taken to protect the ecology and environment while natural resources are being developed or utilized. In the proposed new *EPL*, article 18 states that the development and utilization of natural resources must be appropriate in order to protect biodiversity and ecology. Measures such as the restoration of vegetation must be taken to protect the ecology and environment. Meanwhile, the introduction of invasive species must comply with relevant regulations issued by Government.

Article 19 of the proposed new *EPL* establishes the total amount control scheme of discharging pollutant for the whole country. It must be noted that the maximum amount of pollutant that can be discharged for each province will be first determined by the National Development and Reform Commission, and then approved by the State Council. The Ministry of Environmental Protection might have a say in the process but does not have the authority to set the quota of pollutants that can be discharged in each province. The Provincial Governments will be in charge of distributing the total amount of pollutants within its jurisdiction. If there is a violation of the maximum amount of pollutants that is allowed to be discharged in any administrative area, the environmental impact assessment for new construction project in that area will be suspended. The Central Government is hoping to make use of this scheme to better control and supervise local government's action for economic development and environmental protection. Chapter 3 of the proposed new *EPL* also pays much more attention to the environmental protection in rural areas through article 20. This was not addressed in the 1989 *EPL*. Under the new proposed amendments, heavy metals and other toxic wastes are prohibited from being deposited on farmlands. It is also stated that local government must provide funding for the protection of drinking water sources, treatment of sewage and garbage, prevention and control of pollution caused by livestock and poultry farming, soil pollution and industrial pollution in rural areas.

Chapter 4 of the proposed amendments strengthens polluters' obligations under the *EPL*. It requires that the board of directors shall report to its workers about environmental protection actions taken by the company (article 24 of the proposed new *EPL*). Article 24 also refers to the *Water Law*, *Water Pollution Prevention and Control Law*, *Air Pollution Prevention and Control Law*, *Solid Waste Pollution Prevention and Control Law*, *Noise Pollution Prevention and Control Law*, *Marine Environment Protection Law*, *Promoting Recycling Economy Law* and requires polluters to take effective measures to protect the environment. It is provided

that polluters must install environment monitoring equipment and record original information about the pollutants that are discharged. This information will be included into the national monitoring database and will be available to the public. Businesses and state-run institutions discharging pollutants must report to and register with the relevant authorities in accordance with the provisions of the competent department of environmental protection administration under the State Council (article 27). Article 27 of the proposed new *EPL* abolishes the fee for discharging pollutants that exceed the prescribed national or local discharge standards (established by the article 28 of 1989 *EPL*). Instead, businesses and state-run institutions must pay a fee for discharging pollutants. As provided by article 29 of the 1989 *EPL*, if an enterprise or institution has caused severe environmental pollution, it shall be required to eliminate and control the pollution within a certain period of time. Under article 28 of the proposed new *EPL*, businesses and state-run institutions must eliminate and control the pollution within a certain period of time in case discharging pollutants exceed national/local standards or the quota for total amount control of pollutants. A plan must be developed which includes: (1) a feasibility assessment of improved technology and pollution control; (2) funding; (3) procedures and deadlines; and (4) a relevant environmental impact assessment. The proposed new *EPL* also refers to the *Emergency Response Law*, which was adopted in 2007 for dealing with pollution incidents.

Chapter 5 is a new chapter in the new *EPL*. Article 14 of the 1989 *EPL* provides that the environmental protection administration of the governments at, or above, the county level or other departments invested by law with the power to conduct environmental supervision and management, shall be empowered to make on-site inspections of units under their jurisdiction that discharge pollutants. Article 33 of the proposed new *EPL* provides further details relating to the nature of these on-site inspections, which can include: (1) the construction and operation of pollution prevention equipment; (2) record of discharging pollutants; (3) responsible personnel for environmental protection; (4) enforcement of the plan for the elimination and control of pollution within a certain period of time; and (5) a contingency plan for the environmental pollution accidents.

Article 34 of the proposed new *EPL* concerns public access to environmental information. On the one hand, central and local government has the obligation to publish environment information such as the quality of environment, pollution accidents, paying the pollutants discharge fee and how the fee is used. On the other hand, any citizen, institution or other organization is entitled to access to environmental information from local government by way of application. Local government is obliged to reply to any application in due time.

Articles 35 and 36 of the proposed new *EPL* pay attention to the supervision of local government. Article 35 addresses the supervision of the various levels of government. Environmental protection will be used as one criterion for higher-level government to assess lower level government's performance. Article 36 establishes a reporting obligation for local government to the standing committee of the Local People's Congress.

Chapter 6 prescribes administrative, civil and criminal liabilities for polluters. Under article 43 of the 1989 *EPL*, if a violation of this Law causes a serious environmental pollution accident, leading to the grave consequences of heavy losses of public or private property or human injuries or deaths of persons, criminal responsibility shall be imposed on persons directly responsible for such an accident. The proposed new *EPL* only refers to the Criminal Law without mentioning damages caused (article 39). In the case where a party refuses to accept an administrative sanction, article 41 of the proposed new *EPL* changes the period within which to apply for reconsideration to the higher authority from 15 days to 60 days of receiving the notification. Article 45 of the 1989 *EPL* provides that any governmental official who abuses his power, neglects his duty or engages in malpractices for personal gains while conducting supervision and management for the purposes of environmental protection, shall be given administrative sanction by the unit to which he belongs or the competent higher authorities. If such an act constitutes a crime, the person involved shall be investigated for criminal responsibility. Article 45 of the proposed new *EPL* extends the ambit of the previous counterpart to include sanctions for government officials that: (1) forge or ask someone to forge monitoring information; (2) do not respond to the application from any citizen, enterprise or other organization for environment information; (3) do not act after receiving report from any citizen, enterprise or other organization about discharging pollutants that exceed standards, pollution incidents and abnormal operation of pollution prevention and control equipment; and (4) any other act in breach of other laws and regulations.

Chapter 7 deals with the relations between the *EPL* and international law. It is stated by both the 1989 *EPL* and the new *EPL* that: "If an international treaty regarding environmental protection is concluded or acceded to by the People's Republic of China contains provisions differing from those contained in the laws of the People's Republic of China, the provisions of the international treaty shall apply, unless the provisions are ones on which the People's Republic of China has announced reservations".

### **Legal Implications**

The Standing Committee of National People's Congress has declared that the intention of introducing the new *EPL* is not to comprehensively amend the 1989 *EPL*. Instead, only limited revisions are made.<sup>3</sup> The amendments focus on issues such as government responsibility, environmental standards, environmental protection planning, environmental impact assessment, pollution prevention and control across different administrative areas. The Ministry of Environmental Protection, environmental law scholars and NGOs have criticized the draft revisions.

The assessment by Chinese scholars on the amendments to the 1989 *EPL* generally fall into two camps. Some scholars argue there is no need to keep the 1989 *EPL* because a series of specific environmental protection laws has since been adopted. Other scholars believe that the 1989 *EPL* must be comprehensively revised in order to play the role of "umbrella" legislation for the Chinese legal regime on the protection of environment.<sup>4</sup> Nevertheless, the proposed new *EPL* only deals with a limited array of issues that the National People's Congress believes need to be amended.

The Ministry of Environmental Protection is also disappointed with the proposed new *EPL*. The Ministry of Environmental Protection submitted its comments to the Legal Committee of the Standing Committee of the National People's Congress on 29 Oct 2012. It strongly opposed the determination of the maximum amount of pollutant for each province by the National Development and Reform Commission. This is because the authority of the Ministry of Environmental Protection is weakened by the proposed new *EPL*.

NGOs are also unsatisfied with the proposed new *EPL*. Except for additional details on public access to environmental information, provisions about public participation are missing in the proposed new *EPL*. In 2011, the *Civil Procedure Law of China* was amended to include environmental public interest litigation. This has not even been mentioned in the proposed new *EPL*. As a result, public participation in environmental protection in China still lacks legal basis.

## Conclusions

---

<sup>3</sup> *Explanations on the Draft of Revised Environmental Protection Law of People's Republic of China*, Standing Committee of National People's Congress, 31 Aug 2012.

<sup>4</sup> See: Nan Fang Zhou Mo (Southern Weekly), *Suggestions for the Revision of China's Environmental Protection Law*, 14 Sept 2012 (available in Chinese at <http://www.infzm.com/content/80777>).

The process of amending the 1989 *EPL* has taken more than 20 years. It is possible that the amendments will enter into force in 2013. Amendments to the 1989 *EPL* are undoubtedly essential so as to meet the environmental challenges that China is facing after 30 years of rapid economic development. However, almost every party working on environmental protection in China has criticized the current draft. Therefore, Chinese legislators might need to further work on the final draft of the proposed new *EPL* before it is submitted for approval of the General Assembly of the National People's Congress in 2013. One key area clearly needing further consideration in the final draft of the *EPL* is the issue of public participation.