

COUNTRY REPORT: THE PEOPLE'S REPUBLIC OF CHINA

The Revised Atmospheric Pollution Prevention and Control Law

Jingjing Zhao*

Introduction

The People's Republic of China has witnessed a slight improvement in air quality since its State Council issued the *Action Plan on the Prevention and Control of Atmospheric Pollution* (the Action Plan) in 2013.¹ According to the *2014 Report of the Ministry of Environmental Protection on the Air Quality Status of the Key Areas and 74 Cities* (2014 Report), there has been a small but not satisfactory decrease in both the density of major pollutants and the number of days with heavy pollution weather.² This trend is also confirmed by the *2015 CAAC Clean Air Management Report*, which is the first assessment on the nation-wide air pollution governance situation prepared by the Clean Air Alliance of China (CAAC).³

China still faces severe atmospheric pollution and a series of challenges that are brought with it. Heavy pollution weather still occurs frequently and has not seen any fundamental improvement.⁴ The *2014 China Environmental Status Bulletin*⁵ prepared by the Ministry of Environmental Protection found that 145 out of 161 cities failed to meet the standards as provided by the 2012 *Ambient Air Quality Standards*.⁶ Similarly, the 2014 Report found that 66 out of the 74 examined cities failed to meet such standards. In particular, the Beijing-Tianjin-Hebei Area still experienced heavy air pollution. The annual

* Doctoral Candidate, Part-time Lecturer and Tutor, the Law School, University of Strathclyde, UK.
Email: daisyzhao2006@gmail.com or jingjing.zhao@strath.ac.uk.

¹ Available at: http://www.gov.cn/zwggk/2013-09/12/content_2486773.htm.

² Issued on 2 February 2015, Available at:
http://www.zhb.gov.cn/gkml/hbb/qt/201502/t20150202_295333.htm.

³ Issued on 31 July 2015, Available at: <http://www.cleanairchina.org/product/7225.html>.

⁴ Above (n. 2).

⁵ Issued on 8 June 2015, available at:
http://jcs.mep.gov.cn/hjzl/zkqb/2014zkqb/201506/t20150608_303142.htm.

⁶ Ambient Air Quality Standards (GB 3095-2012), available at:
<http://kjs.mep.gov.cn/hjbhzb/bzwb/dqhjbh/dqhjlzb/201203/W020120410330232398521.pdf>. It replaces Ambient Air Quality Standards (GB 3095-1996).

density of PM_{2.5} in this area was, on average, 1.6 times above the standard. 8 out of the 10 cities with relatively poor air quality are located in the Beijing-Tianjin-Hebei Area.⁷

Relevant Law and Policy Concerning the Revision of the Atmospheric Pollution Prevention and Control Law

At the policy level, the nation is committed to tackling air pollution, one of the most severe environmental problems in China. On 25 April 2015, the Chinese Communist Party Central Committee and the State Council jointly published their *Opinions on Accelerating the Construction of Ecological Civilisation* (Opinions).⁸ One of the main aims of the Opinions is the overall improvement of ecological environmental quality, including the improvement of atmospheric environmental quality.⁹ The Opinions also mandate the comprehensive promotion of pollution prevention and control, in order to solve severe environmental problems such as the pollution of air, water and soil, which are of most concern to the public; to continue implementing the Action Plan; to gradually eliminate heavy pollution weather; and to effectively improve the quality of the atmospheric environment.¹⁰ The Opinions also require the improvement of environmental law and regulations, including revising the Atmospheric Pollution Prevention and Control Law.¹¹ Moreover, the prevention and control of air pollution is also one of the key targets written in *The Chinese Communist Party Central Committee's Recommendations on Formulating the 13th Five-Year Plan on the Development of National Economy and Social Development*, issued on 29 October 2015.¹²

At the level of law, the revised 2014 *Environmental Protection Law* (2014 EPL) briefly addresses the issue of air quality protection.¹³ The 2014 EPL is framework legislation which arguably overarches the implementation and enforcement of other environmental law. It requires the promulgation of specific legislation to refine its rules and principles in order to tackle different environmental problems, such as the revised *Atmospheric Pollution Prevention and Control Law* (new APPCL) in the field of air pollution. The new APPCL is the first specific environmental legislation issued after the entering into force of the 2014 EPL. It

⁷ Above (n 2).

⁸ Available at:

http://news.xinhuanet.com/politics/2015-05/05/c_1115187518.htm.

⁹ Art. 3, the Opinions.

¹⁰ Art. 15, the Opinions.

¹¹ Art. 17, the Opinions.

¹² Available at:

http://news.xinhuanet.com/politics/2015-11/03/c_1117027676.htm.

¹³ Art. 32 of the Environmental Protection Law, Available at:

http://www.npc.gov.cn/npc/xinwen/2014-04/25/content_1861279.htm.

effectively connects with and refines the 2014 EPL. It also transforms the policy as stated in the 2013 Action Plan into law.

The Atmospheric Pollution Prevention and Control Law (2015 revised version)

The existing APPCL was originally issued by the 22nd Meeting of the 6th Standing Committee of the National People's Congress on 5 September 1987, and was revised twice, respectively in the years of 1995 and 2000. It was considered as not being adequate to address the contemporary circumstances of air pollution and needed to be revised. On 29 August 2015, the new APPCL was passed by the 16th Meeting of the 12th Standing Committee of the National People's Congress, to enter into force on 1 January 2016. The new APPCL contains 8 Chapters and 129 Articles, seeing an impressive extension of the existing law. The new APPCL has exercised a revision of all major provisions of the existing law. It includes specific mechanisms and significantly increased the operability of the law.

Chapter 1 lists the main purposes and general principles of the new APPCL. The new APPCL is formulated in order to protect and improve the environment, prevent and control air pollution, safeguard public health, promote the ecological infrastructure development, and facilitate sustainable economic and society growth.¹⁴ In order to fundamentally prevent and control air pollution, the new APPCL insists on treating pollution at source, prioritizing planning processes, transforming the pattern of economic development, optimizing industrial structure and distribution, and adjusting energy structures.¹⁵

The most important change that is made by the new APPCL is arguably adding provisions on the management and assessment of atmospheric environmental quality. The new APPCL strengthens the responsibility and supervision of local governments. It requires the competent department of environmental protection administration under the State Council (in conjunction with other relevant departments of the State Council) to assess the extent to which the local governments reach their targets to improve ambient air quality and fulfil key tasks to control air pollution. Local governments should also establish and implement assessment methods to test performances within their respective jurisdictions. The assessment results shall be announced to the public.¹⁶

Chapter 2 refers to the setting up of air pollution prevention and control standards and the attainment plans to achieve such standards within allotted time. It requires the competent department of environmental protection administration under the State Council or

¹⁴ Art. 1, the new APPCL.

¹⁵ Art. 2, the new APPCL.

¹⁶ Art. 4, the new APPCL.

local governments of provinces, autonomous regions and municipalities (local governments) to develop ambient air quality standards and air pollutant emission standards.¹⁷ Such standards should be made available to the public by the competent environmental protection administration of local government at or above the province level.¹⁸ The implementation of such standards should be regularly assessed, the results of which should be used to revise the standards in a timely manner.¹⁹

Chapter 3 regulates the supervision and administration of air pollution prevention and control. It requires the state to conduct total emission control of key air pollutants, and to progressively implement trading policies for key air pollutant emission rights.²⁰ In the meantime, *Chapter 3* states that for regions within the jurisdiction of respective local governments that exceed national total emission targets of key air pollutants, or could not achieve improvement objectives of ambient air quality as required by the state, those local governments (environmental protection department together with other relevant departments) shall interview the principal of the aforesaid regional government and suspend examination and approval of any environmental impact assessment document for any new construction project that would increase total regional emissions.²¹ This requirement refines the target of tackling air pollution and burdens the main leaders of local governments with the responsibility of air pollution prevention and control, with an aim of having the governments to bear the responsibility and actively prevent and tackling air pollution.

Chapter 4 is the largest chapter of the new APPCL, comprising a considerable 54 articles. It sets out air pollution prevention and control measures, specifically targeting the major sources of air pollution including: pollution from coal and other energy sources; industrial pollution; pollution from motor vehicles, vessels and other non-road mobile sources; fugitive dust pollution; and pollution from agriculture and other sources. For example, in relation to pollution from energy sources, the new APPCL requires oil refinery enterprise to produce fuel oil in accordance to fuel quality standards. It is prohibited to import, sell and burn petroleum coke that fails to comply with quality standards.²² Such fuel quality standards should be developed in accordance with requirements of national air pollutants control, and should be interrelated and simultaneously implemented with national

¹⁷ Art. 8-9, the new APPCL.

¹⁸ Art. 11, the new APPCL.

¹⁹ Art. 12, the new APPCL.

²⁰ Art. 21, the new APPCL.

²¹ Art. 22, the new APPCL.

²² Art. 37, the new APPCL.

emission standards for motor vehicles, vessels and non-road mobile machinery.²³ This requirement is very important for pollution from motor vehicles and vessels, which is a major source of air pollution. It directly regulates fuel production by oil refinery enterprises, and provides legislative authority for environmental protection and quality control departments to regulate the refinement of oil products. This acts as one of the examples of how the new APPCL treats pollution at their source so as to fundamentally prevent and control air pollution.

Chapter 5 defines the mechanism of joint air pollution prevention and control in key regions. It requires the state to establish a joint prevention and control mechanism against air pollution in key regions, and to coordinate regional prevention and control work. The key regions shall be designated by the competent department of environmental protection administration under the State Council, with the approval of the State Council. The relevant local governments in the key regions shall determine one local government to lead the efforts of having joint meetings regularly, meeting the requirements of having unified plans, standards, monitoring, and prevention and control measures, so as to implement the obligations under this law.²⁴ This mechanism helps to avoid the situation of different cities fighting their own battle against air pollution, so as to increase the effectiveness of air pollution prevention and control.

Chapter 6 specifically refers to counter measures of heavy pollution episodes as a response to a series of severe air pollution weathers that have occurred in China. According to this chapter, the state shall establish a monitoring and early warning system for heavy pollution episodes.²⁵ Local governments overseeing provinces, autonomous regions, municipalities, cities that have districts, and counties where heavy pollution episodes could take place shall prepare heavy pollution emergency plans.²⁶ According to the early warning grade of heavy pollution episodes, relevant local governments should execute emergency plans in a timely fashion, and may, according to emergency needs, take measures such as: ordering relevant enterprises to stop or limit production; restricting vehicle transportation; forbidding the use of fireworks and firecrackers; stopping groundwork and construction and demolition of buildings; stopping open-air barbecues; stopping outdoor activities in kindergartens and schools; and implementing artificial weather modification.²⁷

²³ Art. 13, the new APPCL.

²⁴ Art. 86, the new APPCL.

²⁵ Art. 93, the new APPCL.

²⁶ Art. 94, the new APPCL.

²⁷ Art. 96, the new APPCL.

Chapter 7 regulates legal liabilities, comprising 30 articles, and offers nearly ninety kinds of specific punishment measures and types. The new APPCL significantly increases its power to issue strong sanctions. For example, if any entity or individual commits any of the following acts in violation of the Law, they shall make corrections, limit or stop production processes, and be fined of more than RMB 100,000 but less than RMB 1,000,000: (1) Discharging pollutants without proper pollutant discharge permits; (2) Discharging pollutants that exceed air pollution emission standards or targets for total emission of key air pollutants; and (3) Discharging pollutants by unofficial means to evade supervision.²⁸ If the entity or individual has already been fined and ordered to make corrections, but refuses to do so, the administrative department making the sanctions decisions may punish the entity or individual consecutively and *on a daily basis*, starting from the day after when corrections were ordered.²⁹ The rather heavy liabilities will no doubt significantly frighten polluting enterprises. This chapter in a sense increased the operability and integrity of the new APPCL.

Conclusion

Air pollution in China has shown complex characteristics which include a mixed type of pollution and pollutants. The new APPCL was designed to respond to the current status of air pollution, and to deal with the most imminent problems in the prevention and control of air pollution in China. It provides a large number of specific and highly individualised requirements and corresponding punishment measures. It has shown significant improvement of the existing APPCL, and provides a solid legislative foundation for the prevention and control of air pollution.

The new APPCL is, on the other hand, not without any limitations. Although having more detailed requirements than the existing APPCL, the new law still has a number of stipulations which are questionable in their operability. Moreover, the connectivity between the new APPCL and the 2014 EPL is imperfect, especially in the areas of liability of environmental torts, public interest environmental litigation and the public's right to know, and safeguards of public participation. Furthermore, the new APPCL adopts a number of 'soft provisions' which decreases the applicability of the law, such as 'the state encourages and supports',³⁰ 'the state adopts',³¹ and 'people's government should strengthen'.³² Consequently, although showing significant improvement at the level of legislation, the

²⁸ Art. 99, the new APPCL.

²⁹ Art. 123, the new APPCL.

³⁰ Arts. 6, 60, the new APPCL.

³¹ Art. 34, 50, the new APPCL.

³² Arts. 50, 68, 70, the new APPCL.

effectiveness of the new APPCL remains to be seen, and will largely depend on its implementation in practice.