

Annual Review of Chinese Environmental Law Developments: 2007

by Mingqing You

Editors' Summary: In 2007, China continued its environmental development goals outlined in the Eleventh Five-Year Plan passed in 2006. The Seventeenth National Congress convened in Beijing to adopt new policies for 2007-2008 and beyond. This annual review surveys the major developments in Chinese environmental law and policy in the past year. The Article covers national policy shifts, China's activities in the international environmental law arena, zoning and planning regulations, and enforcement mechanisms.

I. Policy Development of the Communist Party of China

On October 15, 2007, the Communist Party of China held its Seventeenth National Congress in Beijing. This Congress was significant because it elected new members into the caucus of political leaders and adopted the basic policy for the next five years and beyond. The Report to the Seventeenth National Congress of the Communist Party of China¹ confirmed the policy of scientific development and the development of a resource-conserving and environment-friendly society.²

The report also proposed the development of an "ecological civilization." The report did not provide a definition for this term; however, it did describe some characteristics such a civilization would require. According to the report, to develop an ecological civilization, industry structures, development, and consumption patterns should be conducive to the conservation of energy and resources; recycling practices should be relatively well established, and a significant percentage of energy should come from renewable sources. An ecological civilization also requires the control of pollutant discharge and improvement of the ecological environment.³ In sum, the requirements of an ecological civilization are similar to those of sustainable development.

The proposal of developing an ecological civilization indicates that the Communist Party of China will make envi-

ronmental protection a higher priority in its political agenda. Since the Communist Party of China is the leading political party in the country, its ecological civilization policy will greatly enhance environmental protection in the future.

II. International Activities

In the past year, China played an active role in environmental diplomacy and international environmental law development, especially on issues related to climate change and energy.

On September 8, 2007, Asia-Pacific Economic Cooperation (APEC) leaders held a meeting and issued the Sydney Declaration.⁴ In this meeting, Chinese President Hu Jintao expressed China's policy and reaffirmed China's commitments to the Asia-Pacific Partnership on Clean Development and Climate. China emphasized four main points: (1) cooperation; (2) sustainable development; (3) China's role in the United Nations Framework Convention on Climate Change (UNFCCC); and (4) technological innovation. China also proposed to establish an Asia-Pacific Network on Forest Rehabilitation and Sustainable Management in order to better tackle climate change.⁵ Before the APEC meeting, China and Australia issued a joint statement on climate change and energy, expressing the intention of cooperation between China and Australia.⁶ Premier Wen Jiabao ex-

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1. CENT. COMM., COMMUNIST PARTY (P.R.C.), REPORT TO THE SEVENTEENTH NATIONAL CONGRESS OF THE COMMUNIST PARTY OF CHINA, available at http://news.xinhuanet.com/newscenter/2007-10/24/content_6938568.htm.
2. *Id.* pt. 3.
3. *Id.* pt. 4.

4. APEC, SYDNEY APEC LEADERS' DECLARATION ON CLIMATE CHANGE, ENERGY SECURITY, AND CLEAN DEVELOPMENT (2007), available at http://www.apec.org/etc/medialib/apec_media_library/downloads/news_uploads/2007aelm.Par.0001.File.tmp/07_aelm_ClimateChangeEnergySec.pdf.

5. Hu Jintao, President, P.R.C., Speech Delivered at the 15th APEC Leaders' Informal Meeting (Sept. 8, 2007) ST. COUNCIL GAZ. Issue 30, Serial No. 1245, available at http://www.gov.cn/gongbao/content/2007/content_778184.htm.

6. Joint Statement of the People's Republic of China and the Commonwealth of Australia on Issues of Climate Change and Energy (issued by the People's Republic of China and the Commonwealth of Australia, Sept. 6, 2007) ST. COUNCIL GAZ. Issue 30, Serial No. 1245,

pressed similar policies later in the Third East Asia Summit and signed the Singapore Declaration on Climate Change, Energy, and the Environment on behalf of China.⁷ China also sent a delegation to the United Nations Climate Change Conference in Bali. To cooperate in mitigating climate change, the China Clean Development Mechanism Fund formally began operations on November 9, 2007.⁸

The Chinese government issued a white paper entitled “China’s National Climate Change Program” in June 2007,⁹ and then another entitled “China’s Energy Conditions and Policies” in December 2007.¹⁰ These documents specify China’s intention to cooperate at both the global and regional levels with other APEC countries and East Asian countries to mitigate and develop adaptive measures for climate change. These efforts also indicate that China is cooperating with other countries to develop an effective, comprehensive, and equitable post-2012 international climate change arrangement under the UNFCCC process.

III. Zoning and Planning

The Standing Committee of the National People’s Congress (the NPC Standing Committee) adopted the Urban and Rural Planning Law of the People’s Republic of China on October 28, 2007. This law came into effect on January 1, 2008, and replaced the 1989 Urban Planning Law.¹¹ The law deals with zoning and planning of houses, public transportation, utilities, and other facilities in urban and rural areas.

The new planning law expressly includes sustainable development and improvement of the human environment in its objectives¹² by requiring that urban and rural plans promote the economical and comprehensive use of resources and energy and protect natural resources such as arable land and cultural heritages.¹³ The law specifically requires that cultural heritage and traditional style be preserved and protected in the redevelopment of urban areas.¹⁴ It also requires coordination between urban and rural development as well as the protection of scenic resorts.¹⁵

available at http://www.gov.cn/gongbao/content/2007/content_778191.htm.

7. Singapore Declaration on Climate Change, Energy, and the Environment, Nov. 21, 2007, available at <http://www.aseansec.org/21116.htm>.
8. News Release, P.R.C., China Clean Development Mechanism Fund Approved by the State Council Officially Starts to Operate, http://www.mep.gov.cn/inte/lydt/200711/t20071112_112791.htm. The official website for the China Clean Development Mechanism Fund is at <http://www.cdmfund.org>.
9. China’s National Climate Change Program (issued by the St. Council, June 3, 2007) ST. COUNCIL GAZ. Issue 20, Serial No. 1235, available at http://www.gov.cn/gongbao/content/2007/content_678918.htm (Chinese version) and <http://en.ndrc.gov.cn/newsrelease/P020070604561191006823.pdf> (English version).
10. China’s Energy Conditions and Policies (issued by the Information Office of the St. Council, Dec. 26, 2007), available at http://www.gov.cn/zwgk/2007-12/26/content_844159.htm.
11. Urban and Rural Planning Law of the People’s Republic of China (promulgated by the Standing Comm. Nat’l People’s Cong., Oct., 2007, effective Jan. 1, 2008) ST. COUNCIL GAZ. Issue 34, Serial No. 1249, available at http://www.gov.cn/gongbao/content/2007/content_823771.htm.
12. *Id.* art. 1.
13. *Id.* art. 4.
14. *Id.* art. 31.
15. *Id.* art. 32.

The new planning law, particularly its procedural rules, will integrate the zoning and planning of urban areas and rural areas, provide for public participation in the planning process, and impose more stringent penalties for breaches of plans. The law is thereby expected to contribute to the reduction of environmental problems and damage to natural and cultural heritage areas arising from urban and rural development.

IV. Conserving Energy and Reducing Pollutant Discharge

A. Energy Saving Law

To provide a more stringent legal regime for energy reduction, the NPC Standing Committee revised on October 28, 2007, the Law of the People’s Republic of China on Energy Saving. The revision took effect on April 1, 2008.¹⁶ The Revised Energy Saving Law regards energy saving as a fundamental state policy and gives energy saving policy a higher priority than it had under the old law.¹⁷

The revised law imposes more responsibility on local governments and their heads. For instance, it requires the national government and local governments to report energy saving performance to the national or local people’s congresses concerned or their standing committees.¹⁸ The law provides that energy saving will be one criterion in the evaluation of the performance of local governments and their leaders. It also obliges provincial governments to report their energy saving performance to the State Council.¹⁹

The Revised Energy Saving Law applies to manufacturing industries, building construction, transportation, and public institutions. Policy tools include industry policies, project approvals, energy saving standards, certification, environmental labeling, and economic incentives such as taxation and differentiated electricity prices according to users’ levels of energy saving efficiency.

The Revised Energy Saving Law also has impacts on international trade. For those products, such as household electricity appliances, covered by the list of compulsory energy efficiency labeling, the importer shall guarantee the correctness of its energy efficiency labels. If an importer violates labeling requirements, the government may impose a fine, or even suspend the importer’s business license.

B. Comprehensive Working Plan for Conserving Energy and Reducing Pollutant Discharge

The Eleventh Five-Year Plan Outline, passed in 2006, stipulates binding targets for energy saving and reduction of pollutant discharge to be achieved before the end of 2010: the energy consumption per unit of gross domestic product (GDP) must be reduced by 20% and sulfur dioxide (SO₂) and chemical oxygen demand (COD) must be reduced by 10%, compared with the corresponding numbers at the end

16. Law of the People’s Republic of China on Saving Energy (revised by the Standing Comm. Nat’l People’s Cong., Oct. 28, 2007, effective Apr. 1, 2008) ST. COUNCIL GAZ. Issue 35, Serial No. 1250, available at http://www.gov.cn/gongbao/2007/issue_1275.htm.

17. *Id.* art. 4.

18. *Id.* art. 5.

19. *Id.* art. 6.

of 2005.²⁰ In 2007, China continued its effort to achieve these targets. On May 23, 2007, the State Council issued the Comprehensive Work Plan for Saving Energy and Reducing Pollutant Discharge.²¹ This work plan is a more detailed arrangement for the achievement of the targets set forth in the Eleventh Five-Year Plan Outline. The work plan provides for regulation of industries that use large quantities of energy and discharge large quantities of pollutants, the phasing out of outdated production technology, improvement of industrial structure, adjustment of energy structure, development of wastewater treatment facilities, mitigation of SO₂ discharged by coal power plants, conservation of water resources, adjustment of natural resources products' prices, introduction and improvement of economic incentives for energy saving and reduction of pollutant discharge, green governmental purchase, and other issues.

By issuing this work plan, China indicated that it intends to take more stringent and more specific measures to save energy and reduce pollutant discharge following its failure to meet the 2006 annual target. So far, the work plan seems to be effective. Statistics indicate that the discharge of both SO₂ and COD decreased at the national level during the first three quarters of 2007.²² These are the first decreases in pollutant discharge rates in China's industrial history.

C. First National Pollution Source Census

A major step to reducing pollution is the initiation of the first national pollution source census. On October 9, 2007, the State Council promulgated the Regulations on National Pollution Source Census, which entered into effect immediately.²³

The purpose of nationwide pollution source censuses is to collect information on pollution sources and to provide supporting data for the creation of economic, social, and environmental policies and plans. The information compiled includes the number of pollution sources and their geographic distribution as well as their distribution among different industrial sectors and data on the generation, discharge, and disposal of pollutants. The government will establish a data-bank of pollution sources and an environmental statistic platform, with special attention to key pollution sources.²⁴

National censuses will be conducted once every 10 years, with a benchmark date of December 31 of the benchmark

year.²⁵ National pollution source censuses cover pollutants from all sources, including agriculture, industry, domestic life, centralized pollutant treatment and disposal facilities, and other facilities. For the purpose of pollution source censuses, sources of domestic pollutants also include the services industry and motor vehicles.²⁶ All legal persons and sole proprietors have the obligation to provide correct information requested,²⁷ and they may be subject to fines for breach of this duty.²⁸

As to institutional arrangements, a National Steering Group for Pollution Source Census will be established within the agency in charge of environmental protection at the national level,²⁹ which will oversee local pollution source census groups established within local environmental protection bureaus.³⁰ The pollution source census staff shall have the power to examine records and collect data and shall conduct their work independently.³¹ Certain penalties may be imposed on those who jeopardize such independence.³²

After each national census, reports will be made available to the public.³³ Even though the government will establish an information-sharing platform, it has not been expressly stated who will have access to such a platform.³⁴ Some information collected will remain confidential as state secrets or protected business information.³⁵ The data collected shall only be used for statistical purposes. The data shall not be used to determine whether reduction targets have been met, nor as evidence for imposing administrative penalties or collecting pollutant discharge fees.³⁶ This provision is to facilitate the collection of accurate information.

The Regulations on National Pollution Source Census mark a further development of the rules provided in the Measures for Administration of Environmental Statistics, which was issued by the State Environmental Protection Agency (SEPA) on November 4, 2006, and entered into effect on December 1, 2006.³⁷ Compared with the Regulations on National Pollution Source Census, Measures for Administration of Environmental Statistics cover more issues, including environmental quality, ecological protection, nuclear radiation, environmental management, and environmental pollution.³⁸

20. The Outline of the Eleventh Five-Year Plan for National Economic and Social Development (promulgated by the Nat'l People's Cong., Apr. 14, 2006) ST. COUNCIL GAZ. Issue 12, Serial No. 1191, available at http://www.gov.cn/gongbao/content/2006/content_268766.htm. Mingqing You, *Annual Review of Chinese Environmental Law Developments: 2006*, 37 ELR 10836 (Nov. 2007).

21. Comprehensive Work Plan for Saving Energy and Reducing Pollutants Discharge (promulgated by the St. Council, May 23, 2007) ST. COUNCIL GAZ. Issue 19, Serial No. 1234, available at http://www.gov.cn/gongbao/content/2007/content_663662.htm.

22. Total National Reduction of Main Pollutants Discharge in 2007 (issued by the SEPA, Mar. 24, 2008) SUMMARY WORK REPORT ON REDUCTION OF DISCHARGE OF MAIN POLLUTANTS Issue 2, Serial No. 20, available at <http://www.mep.gov.cn/cont/wrjp/gzjb/200803/P020080327288707150004.pdf>. The reduction during the first three quarters of 2007 was 2.18% for COD and 3.18% for SO₂, compared with the end of 2005.

23. National Pollution Source Census (promulgated by the St. Council, Oct. 9, 2007, effective Oct. 9, 2007) ST. COUNCIL GAZ. Issue 33, Serial No. 1248, available at http://www.gov.cn/gongbao/content/2007/content_810296.htm.

24. *Id.* art. 2.

25. *Id.* art. 6.

26. *Id.* art. 10.

27. *Id.* art. 8.

28. *Id.* arts. 9 & 39.

29. *Id.* art. 14. Before March 2008, the agency at the national level in charge of environmental protection was called the State Environmental Protection Administration (SEPA). A Ministry of Environmental Protection (MEP) was established on the basis of the SEPA in March 2008 with expanded power and higher status. The official website has been changed to: <http://www.mep.gov.cn>. However, the old website, <http://www.sepa.gov.cn>, is still in use.

30. *Id.* arts. 14 & 15.

31. *Id.* art. 23.

32. *Id.* arts. 26 & 37.

33. *Id.* art. 31.

34. *Id.* art. 34.

35. *Id.* art. 32.

36. *Id.* art. 35.

37. Measures for Administration of Environmental Statistics (promulgated by the SEPA, Nov. 4, 2007, effective Dec. 1, 2006) ST. COUNCIL GAZ. Issue 31, Serial No. 1246, available at http://www.gov.cn/gongbao/content/2007/content_786259.htm.

38. *Id.* art. 2.

Although some preparation work was done, the first pollution source census didn't officially begin until 2007. On May 17, 2007, the General Office of the State Council issued the Program for the First National Pollution Source Census,³⁹ declaring the start of the first general survey. The schedule of the first national pollution source census includes three periods: (1) the period between October 2006 and December 2007 for preparation work; (2) the period from January to December 2008 for the actual census work; and (3) the period from January to July 2009 for analysis and dissemination of data.⁴⁰ The preparation work in 2007 included legal, technical, institutional, and other aspects. The official website for the first national pollution source census functions as a clearinghouse for legal rules, technical assistance, experience, and questions and answers.⁴¹

D. Environmental Monitoring

The day-to-day collection of environmental information is governed by the Measures for Administration of Environmental Monitoring.⁴² Environmental monitoring includes four categories: (1) monitoring of environmental quality; (2) monitoring for the supervision of pollution sources; (3) emergency monitoring for unexpected environmental incident; and (4) monitoring work to collect data for other types of environmental management work, such as the investigation and evaluation of environmental conditions.⁴³ Environmental protection bureaus at or above the county level are the responsible agencies for environmental monitoring.⁴⁴ They have the duty to draft and carry out environmental monitoring work and disclose to the public the information collected through environmental monitoring. They should establish environmental monitoring institutions.⁴⁵

The data collected by such environmental monitoring work shall be used as evidence for environmental statistics, examination of pollutant discharge reports, calculation of pollutant discharge fees, environmental law enforcement, and other environmental administrative work.⁴⁶ The data collected through such environmental monitoring work shall be input into an environmental databank and shall be shared.⁴⁷

The Measures for Administration of Environmental Monitoring also leave some room for the development of private environmental monitoring institutions. According to the rules, polluters shall monitor their pollutant discharge.

39. Program for the First National Pollution Source Census (promulgated by the General Office of the St. Council, May 17, 2007) ST. COUNCIL GAZ. Issue 19, Serial No. 1234, available at http://www.gov.cn/gongbao/content/2007/content_663682.htm.

40. The Circulation on the Arrangement of Implementing the First National Pollution Source Census (issued by the Office of the Steering Group for the First Nat'l Pollution Source Census under the St. Council, Aug. 23, 2007, effective Aug. 23, 2007), available at http://cpcc.mep.gov.cn/pcfafa/200803/t20080328_119823.htm.

41. See First National Pollution Source Census, *Homepage*, <http://cpcc.mep.gov.cn> (last visited Aug. 21, 2008).

42. Measures for Administration of Environmental Monitoring (issued by the SEPA, July 25, 2007, effective Sept. 1, 2007) ST. COUNCIL GAZ. Issue 8, Serial No. 1259, available at http://www.gov.cn/flfg/2007-08/07/content_708389.htm.

43. *Id.* art. 2.

44. *Id.* art. 3.

45. *Id.* art. 4.

46. *Id.* art. 8.

47. *Id.* art. 14.

They may monitor their own pollutant discharge if they can demonstrate that they have the capacity to do so and are so certified by the environmental protection bureau concerned. However, they may also contract out the environmental monitoring to institutions of the local environmental protection bureau or a private environmental monitoring institution that has been certified by the provincial environmental protection bureau as having the necessary capacity.⁴⁸

E. Marine Pollution Control

As to the control of marine pollution, the State Council revised on September 25, 2007, the Regulations on the Prevention and Control of Marine Environmental Pollution by Coastal Construction Projects, effective as of January 1, 2008.⁴⁹ The definition of coastal construction projects was amended to include all new, revision, and expansion projects that have adverse effects on the marine environment. Some minor revisions were also made to the approval authorities of coastal construction projects. Additionally, the provisions on penalties for violations were updated to keep in line with other relevant laws.⁵⁰

F. Electronic Waste Management

The Rules on Management and Prevention of Environmental Damages From Electronic Wastes, issued by the SEPA, entered into force on February 1, 2008.⁵¹ This document will govern the dismantling, use and reuse, and disposal of electronic wastes. However, activities related to dangerous electronic wastes shall be governed by relevant provisions of the Law on Solid Wastes.⁵²

The SEPA and local environmental protection bureaus are in charge of pollution from electronic wastes.⁵³ They will perform this function primarily through a permit-based management regime. All operators engaged in the business of dismantling, use and reuse, and disposal of electronic wastes shall be listed either on the "temporary" list of operators or on the list of operators.⁵⁴ An operator must first be listed on the temporary list of operators, and then may move up onto the list of operators. To be listed on the temporary list, an operator shall submit environmental impact assessment (EIA) documentation with the local environmental protection bureau and then pass the examination of such environmental protection bureau after its operational facilities have been completed. The operator shall also be duly registered with the local administration of trade and commerce. The environmental protection bureau will put such operators on the public list of temporary operators. If an operator has not been found in violation of relevant rules more than

48. *Id.* art. 21.

49. Regulations on the Prevention and Control of Marine Environmental Pollution by Coastal Construction Projects (revised by the Standing Comm. Nat'l People's Cong., Sept. 25, 2007, effective Jan. 1, 2008) ST. COUNCIL GAZ., Issue 32, Serial No. 1247, available at http://www.gov.cn/gongbao/content/2007/content_797345.htm.

50. *Id.* art. 2.

51. Administrative Rules on the Prevention and Mitigation of Pollutions From Electronic Wastes (issued by the SEPA, Sept. 27, 2007, effective Feb. 1, 2008), available at http://www.mep.gov.cn/info/gw/juling/200709/t20070928_109698.htm.

52. *Id.* art. 2.

53. *Id.* art. 3.

54. *Id.* art. 20.

twice within the past three years, it will be listed on the public list of operators.⁵⁵ The listed operators shall follow relevant substantive and procedural rules and be subject to the supervision of the local environmental protection bureau.

V. Nuclear Safety

The year 2007 saw much development in the safety management of civilian nuclear power. On July 11, 2007, the State Council promulgated the Regulations on the Supervision and Administration of Civilian Nuclear Safety Equipment, which became effective on January 1, 2008.⁵⁶ This document covers standards, the permit system, importation, exportation, and other matters regarding civilian nuclear safety equipment.

Under these regulations, the SEPA issued on December 28, 2007, the Rules on Supervision and Management of the Designing, Manufacturing, Installation, and Nondestructive Inspection of Civilian Nuclear Safety Equipment,⁵⁷ the Rules on the Administration of Qualification of Welding Operators of Civilian Nuclear Safety Equipment,⁵⁸ and the Rules on the Supervision and Management of the Importation of Civilian Nuclear Safety Equipment.⁵⁹ The SEPA and the Commission of National Defense Scientific Work jointly issued the Rules on the Administration of the Qualification of Nondestructive Inspectors for Civilian Nuclear Safety Equipment.⁶⁰ All these rules became effective on January 1, 2008.

VI. Public Participation

China made much progress in promoting public participation in 2007. On April 5, 2007, the State Council issued the Regulations on Open Government Information, effective May 1, 2008.⁶¹ These regulations provide for the obligation of governmental agencies to disclose certain governmental information and provide for the right of private citizens to petition for the release of undisclosed information. These

regulations will greatly improve the access to governmental information.

On April 11, 2007, the SEPA issued the Measures for Disclosure of Environmental Information (for trial implementation), also effective May 1, 2008.⁶² The purpose of these rules is to specify the obligation of environmental protection authorities and enterprises to disclose environmental information according to the requirements of the Regulations on Open Government Information and other laws and regulations.⁶³

The Xiamen Paraxylene (PX) Incident was an example of a successful challenge by the general public of governmental approval of an investment that may have significant adverse environmental effects. This incident involved the opposition of the general public against the establishment of a PX manufacturing plant in a suburban chemical industrial park of Xiamen, Fujian Province, a major city close to Taiwan Strait. Tenglong Aromatic PX (Xiamen) Company planned to establish a PX plant with an annual capacity of 800,000 tons. This production line would contribute greatly to the local GDP and would also create many job opportunities. The company followed EIA procedures and received all necessary governmental approvals. However, because of widespread belief in the alleged high toxicity of PX and the risk of serious pollution, the public resorted to peaceful protest on the streets. The local government later yielded to public opinion and ordered a suspension of the project. The project may be relocated in the future.

This incident is an example of the power of public opinion and public participation. It also demonstrates the insufficiency of the standard legal procedure for taking public participation into account in decisionmaking processes on economic development and environmental protection.

The revision of the Law of the People's Republic of China on Prevention and Mitigation of Water Pollution is another example of extensive public participation in the legislative process. The NPC Standing Committee published the draft of the revision in various news media and invited the public to submit comments. The NPC Standing Committee adopted the revision on February 28, 2008. Thus, public participation in the legislative process will be a regular part of future environmental lawmaking in China.

VII. Economic Policies Related to Environmental Protection

China is making greater efforts to promote environmental protection alongside economic policies. In the past, economic policies related to environmental protection were mainly concerned with market access within specific industries. In 2007, these efforts continued—for example, the revision of the List of Industries Open to Foreign Investment,⁶⁴ and revision of the List of Equipment (Products) for the Environmental Protection Industry Currently Encour-

55. *Id.* art. 7.

56. Regulations on the Supervision and Administration of Civilian Nuclear Safety Equipment (promulgated by the St. Council, July 11, 2007, effective Jan. 1, 2008), available at http://www.gov.cn/zwgk/2007-07/19/content_690167.htm.

57. Rules on Supervision and Management of the Design, Manufacturing, Installation, and Nondestructive Inspection of Civilian Nuclear Safety Equipment (HAF601) (promulgated by the SEPA, Dec. 28, 2007, effective Jan. 1, 2008), available at http://www.gov.cn/flfg/2008-01/11/content_855857.htm.

58. Rules on the Administration of Qualification of Welding Operators of Civilian Nuclear Safety Equipment (HAF 603) (promulgated by the SEPA, Dec. 28, 2007, effective Jan. 1, 2008), available at http://www.mep.gov.cn/info/gw/juling/200801/t20080108_116032.htm.

59. Rules on the Supervision and Management of the Importation of Civilian Nuclear Safety Equipment (HAF604) (promulgated by the SEPA, Dec. 28, 2007, effective Jan. 1, 2008), available at http://www.mep.gov.cn/info/gw/juling/200801/t20080108_116032.htm.

60. Rules on the Administration of the Qualification of Nondestructive Inspectors for Civilian Nuclear Safety Equipment (HAF 602) (jointly promulgated by the SEPA and the Comm'n of Nat'l Defense Scientific Work, Dec. 28, 2007, effective Jan. 1, 2008), available at http://www.gov.cn/flfg/2008-01/28/content_871284.htm.

61. Regulations of the People's Republic of China on Open Government Information (promulgated by the St. Council, Apr. 5, 2007, effective May 1, 2008) ST. COUNCIL GAZ. Issue 15, Serial No. 1230, available at http://www.gov.cn/gongbao/content/2007/content_621230.htm.

62. Measures for Disclosure of Environmental Information (for trial implementation) (promulgated by the SEPA, Apr. 11, 2007, effective May 1, 2008) ST. COUNCIL GAZ. Issue 5, Serial No. 1256, available at http://www.gov.cn/gongbao/content/2008/content_892212.htm.

63. *Id.* art. 1.

64. List of Industries Open to Foreign Investment (2007 ed.) (promulgated by the Nat'l Dev. & Reform Comm'n, effective Dec. 1, 2007), available at http://www.gov.cn/flfg/2007-11/07/content_798572.htm.

aged by the State⁶⁵—but China went beyond industry regulation to introduce some new policies combining economics and environment.

One such development in 2007 was the introduction of environmentally friendly banking. The People's Bank of China, the Chinese central bank, issued the Guidelines on the Improvement and Strengthening of Financial Services for Energy Saving and Environmental Protection on June 29, 2007.⁶⁶ The SEPA, the People's Bank of China, and the China Banking Regulatory Commission jointly issued the Opinion on Implementing Environmental Laws and Regulations and Prevention and Management of Credit Risks on July 12, 2007.⁶⁷ More such policies are expected for 2008.

VIII. Environmental Law Enforcement Mechanisms

In 2007, the SEPA improved its law enforcement measures on two fronts: (1) enforcement through the court system; and (2) the moratorium on approvals of EIAs.

A. Judicial Enforcement

On April 20, 2007, the SEPA submitted to the Intermediate People's Court of Haining City, Zhejiang Province, the Administrative Penalty Enforcement Application, requesting the court to enforce an administrative penalty order against Haining Longzhou Printing and Dyeing Company. This company finished the installation of one boiler and two generator groups and put them into operation at the end of 2004 without prior examination by the environmental protection authorities. The SEPA duly imposed an Administrative Penalty Order on November 23, 2006, and delivered the order on December 4, 2006, requesting the company to stop immediately the operation of the boiler and generator groups. The company reported to the SEPA that it would stop the operation of the boiler and generator groups as of December 4, 2006. However, on March 28, 2007, the SEPA found that the company had not fully complied with the order and did not stop the operation of one of the generator groups. As the company neither petitioned for an administrative review nor judicial review of the order, the order became effective against the company and the SEPA submitted an enforcement application to the court.⁶⁸

This case represents the first time the SEPA has enforced an administrative penalty order through a court. Although the law provides for judicial enforcement mechanisms, the SEPA had never exercised that option, instead enforcing its

administrative penalty orders through its own law enforcement officers. Following the success of the court-ordered compliance, the SEPA encouraged all subordinate environmental protection authorities to enforce their administrative orders through the courts. Enforcement via judicial process may become a standard practice in the future.

B. Moratoria of EIA Approvals⁶⁹

On January 10, 2007, the SEPA began to implement a daring and controversial administrative enforcement measure: moratoria on EIAs. The striking feature of this administrative enforcement measure is that once a moratorium is imposed, its effect may be regionwide, enterprise groupwide, or industrywide. To carry out any project, be it a new project or the modification or expansion of an existing project, it is a prerequisite to obtain an EIA approval from appropriate environmental protection authority. Therefore, a moratorium on EIA approvals has great significance.

A regionwide moratorium means that if an enterprise seriously contravenes relevant environmental protection rules or if the region has exhausted its pollutant discharge limits set by the government, all EIA approval applications from the region concerned will be subject to a moratorium. An enterprise groupwide EIA approval moratorium means that if an enterprise seriously contravenes relevant environmental protection rules, all EIA approval applications from the enterprise group concerned will be subject to a moratorium. Similarly, an industrywide EIA approval moratorium means that if an enterprise seriously contravenes relevant environmental protection rules, all EIA approval applications from the industry concerned will be subject to a moratorium. The only exceptions to these moratoria are recycling and environmental protection projects. Even if a moratorium is in place, the EIA application for a recycling or environmental protection project from the region, enterprise group, or industry concerned may still be approved by the environmental protection authorities.

On January 10, 2007, the SEPA imposed four regionwide moratoria and four enterprise groupwide moratoria. The four cities implicated in the regionwide moratorium are the following: (1) Tangshan of Hebei Province; (2) Luliang of Shanxi Province; (3) Liupanshui of Guizhou Province; and (4) Laiwu of Shandong Province. Until now, the SEPA has not imposed industrywide moratoria.

The Tangshan decision has two paragraphs. In the first paragraph, the SEPA said that it would take legal proceedings against Tangshan Coal Power Plant because it failed to apply for environmental inspection after it put into trial operation two coal power generator groups (2 x 300 megawatt (MW)) and failed to shut down its 5 x 50 MW small generator groups according to the conditions set forth in the EIA approval. In the second paragraph, the SEPA said that it would impose a moratorium on EIA approval of Tangshan because the total pollutant discharges of Tangshan had exceeded its total pollutant discharge control limits. The SEPA then provided that “[u]ntil Tangshan Coal Power Plant had made the necessary corrections, all construction

65. List of Equipment (Products) for the Environmental Protection Industry Currently Encouraged by the State (promulgated by the Nat'l Dev. & Reform Comm'n, Apr. 30, 2007, effective Apr. 30, 2007), available at http://www.gov.cn/zfjg/content_649213.htm.

66. Guidelines on the Improvement and Strengthening of the Financial Services for Energy Saving and Environmental Protection (issued by the People's Bank of China, June 29, 2007), available at http://www.gov.cn/zwgk/2007-07/06/content_675200.htm.

67. Opinion on Implementing Environmental Laws and Regulations and Prevention and Management of Credit Risks (issued by the SEPA, the People's Bank of China, and China Banking Regulatory Comm'n, July 12, 2007), available at http://www.mep.gov.cn/info/gw/huangfa/200707/t20070718_106850.htm.

68. Administrative Penalty Enforcement Application Against Haining Longzhou Company (applied by the SEPA, Apr. 20, 2007), available at http://www.sepa.gov.cn/law/fzjs/xzcf/200704/t20070426_103157.htm.

69. For a more detailed analysis of the moratoria of EIA approvals, see Mingqing You, *Moratorium on EIA Approvals: China's New Environmental Law Enforcement Tool*, 48 NAT. RESOURCES J. (forthcoming).

projects increasing the total pollutant discharges would be subject to a moratorium.⁷⁰

The Luliang decision also has two paragraphs. The SEPA first provided in paragraph one that Luliang Coke Factory broke the law by failing to apply for environmental inspection and failing to complete relevant environmental protection facilities. The rest of the decision was almost identical to the Tangshan decision; the only difference is that here it was Luliang Coke Factory that needed to make the necessary corrections.⁷¹

In the Liupanshui decision, the SEPA stated that Faer Coal Power Plant failed to carry out EIA procedures for its new 4 x 600 MW project and that Yemazhai Coal Power Plant failed to carry out EIA procedures and failed to install sulfur elimination facilities for its 3 x 200 MW technology innovation project. On July 15, 2005, the National Development and Reform Commission, the Ministry of Land and Resources, the Ministry of Water Resources, and the SEPA jointly ordered the stop of these two projects. Despite the order, the projects continued. According to the Report on the Review and Supervision of New Projects jointly issued by six ministries and commissions, including the SEPA, on December 18, 2006, all local governments and governmental agencies shall strictly follow the rules on new projects and ensure that all new projects follow EIA procedures. This report provides that the state would suspend state investment in and impose EIA approval moratoria on the regions that failed to enforce these rules. Since these two projects failed to go through EIA procedures and follow other relevant environmental protection rules, the SEPA decided to impose an EIA approval moratorium on Liupanshui until the two plants made the necessary corrections.⁷²

The Laiwu decision was made on the same legal ground and legal reasoning. Because Laiwu Steel Group did not carry out EIA procedures for its cold-rolled steel sheets project, the SEPA imposed the moratorium on Laiwu City on the same legal ground as in the Liupanshui decision.⁷³

The four enterprise groups subject to moratoria are the following: (1) Datang International Power Generation Co., Ltd.; (2) China Huadian Corporation; (3) China Huaneng Group; and (4) China Guodian Corporation.⁷⁴ All of these enterprise groups are power generation enterprise groups. The moratoria were imposed because each enterprise group had one subsidiary that broke relevant environmental rules.

On July 3, 2007, the SEPA, under the category of river basinwide moratorium, imposed EIA approval moratoria on six cities, two counties, and five industrial zones/parks, namely Chaohu City and Wuhu Economic Development Zone of Anhui Province (Anhui part of the Yangtze River Basin), Baiyin City and Lanzhou High-Tech Industrial Development Zone of Gansu Province, Bayanzhuoer City of Inner Mongolia, Weinan City of Shaanxi Province, Hejin County-Level City and Xiangfen County of Shanxi Province (Yellow River Basin), Zhoukou City of Henan Province and Bangbu City of Anhui Province (Huaihe Basin), and Handan Economic and Technology Development Zone of Hebei Province, Puyang Economic Development Zone of Henan Province, and Shenxian County Industrial Park of Shandong Province.⁷⁵ All river basinwide moratoria address water pollution. The main reason given by the SEPA is that the water quality of these parts of the river is of Grade V or worse than Grade V,⁷⁶ which means that these parts of the river cannot accept any more water pollutants. Therefore, the rationale for imposing these river basinwide moratoria is similar to that of the moratoria imposed on Tangshan and Luliang.

Arguably the river basinwide moratorium is the fourth type of EIA approval moratorium.⁷⁷ Although the SEPA uses the term “river basinwide moratorium,” an analysis of all these river basinwide moratoria reveals that they are only effective in particular cities or counties, not the whole river basin concerned, as the term river basinwide moratorium suggests. The reason that the SEPA uses the term river basinwide moratorium is likely because these moratoria were imposed to protect the whole basin against water pollution. As the water protection of the whole river basin can only be achieved through regionwide moratoria and the literal meaning of “region” can include a river basin, this Article takes the opinion that the so-called river basinwide moratorium should not be treated as a separate type of moratorium.

So far, the moratoria have been very successful. Each city under a regionwide moratorium, except Luliang, made necessary corrections and subsequently was released from the moratorium.⁷⁸ The Ministry of Environmental Protection is expected to use this enforcement tool more frequently in the future.

IX. Future Development

China will continue to increase efforts to protect the environment and be more responsible to the international community. It will do so by implementing existing international

70. Notice on the Moratorium of EIA Approvals From Tangshan City of Hebei Province (General Office of the SEPA, Jan. 10, 2007), available at http://www.sepa.gov.cn/info/gw/huanban/200701/t20070111_99518.htm.

71. Notice on the Moratorium of EIA Approvals From Luliang City of Shanxi Province (General Office of the SEPA, Jan. 10, 2007), available at http://www.sepa.gov.cn/info/gw/huanban/200701/t20070111_99517.htm.

72. Notice on the Moratorium of EIA Approvals From Liupanshui City of Guizhou Province (General Office of the SEPA, Jan. 10, 2007), available at http://www.sepa.gov.cn/info/gw/huanban/200701/t20070111_99511.htm.

73. Notice on the Moratorium of EIA Approvals From Laiwu City of Shandong Province (General Office of the SEPA, Jan. 10, 2007), available at http://www.sepa.gov.cn/info/gw/huanban/200701/t20070111_99510.htm.

74. News Release, SEPA, SEPA First Uses Moratoriums (Jan. 10, 2007), available at http://www.sepa.gov.cn/xcyj/zwhb/200701/t20070110_99415.htm.

75. News Release, SEPA, SEPA Decides to Impose River Basin-Wide EIA Approval Moratoria for Heavily Polluted Parts of Yangtze River, Yellow River, Huai River, and Hai River (July 3, 2007), available at http://www.sepa.gov.cn/xcyj/zwhb/200707/t20070703_106035.htm.

76. Grade V means the water is unsuitable for direct contact with the human body. If the water quality is worse than Grade V, the water has almost lost its ecological function.

77. See *supra* note 75.

78. As to Laiwu, see Press Release, SEPA, Laiwu Is Released From Region-Wide Moratorium (Feb. 13, 2007), available at http://www.sepa.gov.cn/xcyj/zwhb/200702/t20070213_100832.htm; as to Tangshan and Liupanshui, see Press Release, SEPA, SEPA Reports Effects of the First Group of Moratoriums and Will Expand the Application and Level of Moratoriums (Jan. 31, 2007), available at http://www.sepa.gov.cn/xcyj/zwhb/200701/t20070131_100400.htm.

law and participating in the development of international environmental law at the global, regional, and bilateral levels.

The change of the SEPA into the Ministry of Environmental Protection strengthens the institutional capacity of environmental protection and signifies the higher position of environmental protection in the agenda of Chinese government. This newly established ministry is expected to make more effective law enforcement efforts and introduce more effective law enforcement mechanisms.

Additional environmental legislation is under consideration and may be adopted in the near future. Examples are the Regulations on Environmental Impact Assessment of Development Plans, the Recycling Economy Law, the Law on Prevention and Control of Land Pollution, and the Law on Nature Reserves.

Some of the country's existing environmental laws will be revised. The most important pending revision is that of

the Environmental Protection Law, the basic environmental protection law of China. Other environmental laws to be revised include the Law on Prevention and Control of Water Pollution, the Law on Prevention and Control of Air Pollution, and the Law on Prevention and Control of Noise.

China will also adopt more economic policies to protect the environment. Policies under consideration include a trading system for pollutant discharge permits, ecological compensation, green insurance, environmental liability insurance, green banking, special environmental protection requirements on listed companies, differentiated electricity sales prices for power plants with different energy efficiency and environmental protection standards, green fiscal policies, taxation, and international trade policy. These economic policies will gradually form a systematic regime that will take China into the future of environmental protection.