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NEWS & ANALYSIS

Annual Review of Chinese Environmental Law Developments: 2006

by Mingqing You

Editors' Summary: The 2006 passage of the Eleventh Five-Year Plan may mark a turning point for sustainable development in China. In 2006, China began to take a comprehensive approach to natural resources conservation and environmental protection. In this annual review, Mingqing You surveys the major developments in Chinese environmental law and policy in the past year. He covers national policy shifts, international environmental regimes China joined, economic incentive policies, and pollution control indicators.

I. National Policy Changes

The most important developments in China in 2006 were national policy changes, the most notable of which was the Central Government's promotion of resource conservation and environmental consciousness. The notion of a resource-conserving and environment-friendly society was first proposed in 2005. In the Conference on Population, Resources, and Environment, held by the Central Committee of the Communist Party of China on March 12, 2005, Hu Jintao, president of the People's Republic of China and secretary general of the Communist Party of China, remarked that China should develop a resource-conserving and environment-friendly society. He emphasized that to effect a comprehensive sustainability plan to reduce pressure on population, resources, and the environment, scientific development as well as economic adjustments would be necessary. Future economic development should occur in partnership with efficient use of resources, reduction of environmental pollution, and emphasis on quality and efficacy.¹

The policy of developing a resource-conserving and environment-friendly society was furthered by two major events in 2006. The first was the creation of the Outline of the Eleventh Five-Year Plan for National Economic and Social Development (the Eleventh Five-Year Plan Outline)²; the second was the Sixth National Environmental Protection Conference.

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The fourth session of the Tenth National People's Congress (NPC) deliberated and passed the Eleventh Five-Year Plan Outline on March 14, 2006. The Eleventh Five-Year Plan Outline emphasizes resource conservation and environmental protection, particularly Part Six of the Outline, entitled "Building a Resource-Conserving and Environment-Friendly Society." This section contained five chapters, which declared the governmental policies on recycling, ecosystems protection and restoration, environmental protection, resources management, and marine and climate resources. The Eleventh Five-Year Plan Outline puts forward binding targets, which the government has a responsibility to achieve. For example, 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 relevant numbers at the end of 2005.

In the Sixth National Environmental Protection Conference held in April 2006, Premier Wen Jiabao put forward the famous "three changes." The first of these requires China to begin to prioritize environmental protection along with economic growth. The second change will emphasize the concurrent improvement of the economy and the environment. The third change will add legal, economic, and technological tools for environmental protection to the administrative tools already in use.³ The essence of these changes is that environmental protection and economic development should be emphasized equally, and that all appropriate and necessary measures, including legal measures, should be taken to achieve this goal.

1. *Hu Jintao Emphasizes to Implement Environmental and Resources Work and Put Social and Economic Development in a Benign Circle*, XINHUANET, Mar. 13, 2005, available at http://news.xinhuanet.com/newscenter/2005-03/13/content_2689920.htm.

2. 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, avail-

able at http://www.gov.cn/gongbao/content/2006/content_268766.htm. [hereinafter Eleventh Five-Year Plan Outline]

3. Implement the Scientific Outlook on Development in an All-round Way and Accelerate the Construction of an Environment-Friendly Society (statement by Wen Jiabao, Premier, St. Council, Apr. 17, 2006) ST. COUNCIL GAZ. Issue 16, Serial No. 1195, available at http://www.gov.cn/gongbao/content/2006/content_303476.htm.

In sum, by adopting the policy of taking legal and other measures to achieve the resource conservation and environmental protection goals of the Eleventh Five-Year Plan Outline, especially its binding targets, the Communist Party of China and the National People's Congress of China sent a clear message that resource conservation and environmental protection are of the same importance as economic development.

The 2006 conference marked a historic change for environmental protection by greatly enhancing the status of environmental protection, establishing a new relationship between environmental protection and economic development, and signifying that China no longer will sacrifice the environment for economic development.

As a signal of this fundamental national policy change, in July 2006, the Central Committee of the Communist Party of China issued the Experimental Comprehensive Evaluation Rules for Local Communist Party and Governmental Teams and Local Leaders Embodying the Scientific Developing View,⁴ the new rule on the promotion of local communist party officers and local governmental officers. This new rule also emphasized environmental protection on the local level.

II. International Environmental Law

Four main international environmental law developments affected China in 2006.

On April 29, 2006, the Standing Committee of the National People's Congress (NPC Standing Committee) voted to accede to the Joint Convention on the Safety of Spent Fuel Management and the Safety of Radioactive Waste Management,⁵ but made two declarations: one is related to the interpretation of "transboundary movement," as referred to in Article 2(u), and in Article 27; the other is related to the non-application of the Convention to Macao unless China gives a separate notice.⁶ According to the first declaration, China interprets the term "transboundary movement" as follows:

[B]efore consenting to a transboundary movement originating from another Contracting Party's domestic entity, any Contracting Party to the Joint Convention on the Safety of Spent Fuel Management and on the Safety of Radioactive Waste Management which is a State of destination shall confirm the said transboundary movement with the State of origin of the said transboundary movement, and obtain authorization from the said State of origin.⁷

4. CENT. COMM., COMMUNIST PARTY (P.R.C.), THE EXPERIMENTAL COMPREHENSIVE EVALUATION RULES FOR LOCAL COMMUNIST PARTY AND GOVERNMENTAL TEAMS AND LOCAL LEADERS EMBODYING THE SCIENTIFIC DEVELOPING VIEW (2006), available at <http://www.xinji.gov.cn/bumen/kaoheban/html/2006101910186-1.html>.

5. Joint Convention on the Safety of Spent Fuel Management and the Safety of Radioactive Waste Management, Dec. 24, 1997, INFCIRC/546.

6. Decision of the Standing Committee of the National People's Congress on Acceding to the Joint Convention on the Safety of Spent Fuel Management and on the Safety of Radioactive Waste Management (promulgated by the Standing Comm. Nat'l People's Cong., Apr. 29, 2006) ST. COUNCIL GAZ. Issue 17, Serial No. 1196, available at http://www.gov.cn/gongbao/content/2006/content_310624.htm.

7. *Id.*

Two months later, on June 29, 2006, the NPC Standing Committee ratified the 1996 Protocol to the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matters,⁸ but at the same time made the following two declarations. The first declaration is that as to Article 16.2 and 16.5, when China is a Party to a dispute about the interpretation or application of the Protocol (including the interpretation or application of Article 3.1 or 3.2), its consent will be required before the dispute may be settled by means of the Arbitral Procedure set forth in Annex 3. The second declaration is related to the status of Macao; unless China gives a separate notice, the Protocol will not be applicable to Macao.⁹

The State Council also decided on September 8, 2006, to accede to the Convention on the Conservation of Antarctic Marine Living Resources. According to the declaration made by the State Council, this convention, for the time being, shall not be applicable to Hong Kong.¹⁰

The Regulations on the Import and Export Management of Endangered Species of Wild Flora and Fauna is another action taken by the Chinese government to implement international environmental law. This new regulation was passed by the State Council of China on April 12, 2006, and took effect on September 1, 2006.¹¹ It is a domestic implementation instrument for the Convention on International Trade in Endangered Species of Wild Flora and Fauna (CITES).

III. Economic Incentive Policies

A key development of 2006 was that the government used economic incentive policies to protect the environment and conserve resources. The Chinese government had used this incentive mechanism in the past, the number of such policies implemented in 2006 was much larger than in past years. More importantly, the policies taken in 2006 were not limited to investment and production, but also extended to consumption.

A. Investment Policies

According to the government policies, the public fund budget should give priority to pollution prevention, ecological protection, resource management, and state security. Greater support should be given to regions subject to development restraints, regions forbidden to be developed, and the central and western parts of China, especially old Com-

8. 1996 Protocol to the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matters, Nov. 7, 1996, available at <http://www.epa.gov/owow/oceans/regulatory/dumpdredged/londonconvention/1996PROTOCOL.pdf>.

9. Decision of the Standing Committee of the National People's Congress on Ratifying the 1996 Protocol to the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter (promulgated by the Standing Comm. Nat'l People's Cong., June 29, 2006) ST. COUNCIL GAZ. Issue 23, Serial No. 1202, available at http://www.gov.cn/gongbao/content/2006/content_363610.htm.

10. Official Reply of the State Council on Deciding to Accede to the Convention on the Conservation of Antarctic Marine Living Resources (issued by the St. Council, Sept. 8, 2006) ST. COUNCIL GAZ. Issue 32, Serial No. 1211, available at http://www.gov.cn/gongbao/content/2006/content_443275.htm.

11. Regulations on Administration of Import and Export of Endangered Wild Animals and Plants (P.R.C.) (promulgated by the St. Council, Apr. 12, 2006, effective Sept. 1, 2006) ST. COUNCIL GAZ. Issue 18, Serial No. 1197, available at http://www.gov.cn/gongbao/content/2006/content_320600.htm.

unist revolutionary bases, regions where minority nationalities live, frontier regions, poor regions, Three Gorges regions, and resource-depleted regions. Projects to be supported by national and local public funds are those involving geological exploration of energies and important minerals, protection and restoration of ecological systems, pollution control, conservation, model recycling, major water resources, renewable energy, and urban sewage and waste disposal.¹²

B. Industry Policies

A notable feature of environmental law development in 2006 is that the government issued several industry policies with great environmental protection effect. The reason for issuing these industry policies was that economic development was becoming more and more restricted by environmental factors. The policies signaled to industry how economic development should be balanced with environmental protection.

On March 12, 2006, the State Council issued the Notice on the Speeding Up of Structural Adjustment of Industries With Surplus Productivity. This notice expressly requires that outdated facilities, which disrupt resources and pollute the environment, should be closed, while expressly encouraging traditional industries to upgrade technology and enhance environmental protection standards. This notice requires that environmental standards, as a part of market access standards, should be strictly enforced.¹³

To make the Notice on the Speeding Up of Structural Adjustment of Industries with Surplus Productivity more specific and more effective, the National Development and Reform Commission (NDRC), the State Environmental Protection Agency (SEPA), and other ministry-level governmental agencies jointly issued industry structure adjustment policies for ferroalloy,¹⁴ coal,¹⁵ aluminum,¹⁶ cement,¹⁷ electricity,¹⁸ calcium carbide,¹⁹ textile,²⁰ steel,²¹ and other mate-

rials. In 2006, the government also enforced two industry policies passed in previous years dealing with the coke²² and copper smelting industries.²³

The NDRC and the SEPA also issued on August 1, 2006, Guidelines on the Examination of New Projects, requiring the termination of all projects that do not meet environmental standards.²⁴

While limiting industries with outdated technology and surplus productivity, the government also encourages the development of a recycling economy. On September 7, 2006, the NDRC and other governmental branches jointly issued Rules on the Evaluation and Management of Comprehensive Use of Resources Encouraged by the State, which provides tax reduction or exemption for enterprises engaged in resources recycling.²⁵ This guideline is issued to implement Opinions on the Speeding Up of Recycling Economy adopted by the State Council on July 2, 2005.²⁶

C. Consumption Policies

The government used economic instruments to direct both private consumption and governmental consumption for the purpose of conserving resources and protecting the environment.

The Circular of the Ministry of Finance and the State Administration of Taxation on Adjusting and Perfecting Consumption Tax Policy²⁷ jointly promulgated by the Ministry of Finance and the State Administration of Taxation on March 20, 2006, effective as of April 1, 2006, adjusted the tax items and tax rates of ongoing consumption taxes. Golf clubs, one-off chopsticks (disposable), yachts, and wood flooring were added to the list of items subject to consumption tax. The consumption taxes for automobiles were ad-

12. Eleventh Five-Year Plan Outline, *supra* note 2.

13. Circular of the State Council on Accelerating Adjustment to the Structure of Industries With Excess Production Capacity (issued by the St. Council, Mar. 12, 2006) ST. COUNCIL GAZ. Issue 14, Serial No. 1193, available at http://www.gov.cn/gongbao/content/2006/content_283845.htm.

14. Circular on the Speeding Up of Structural Adjustment of Ferroalloy Industry (promulgated by the Nat'l Dev. & Reform Comm'n, the St. Envtl. Protection Agency (EPA) et al., Apr. 5, 2006), available at http://www.ndrc.gov.cn/zcfb/zcfbtz/tz2006/t20060411_65795.htm.

15. Guidelines on the Speeding Up of Structural Adjustment of Coal Industry and Responding to Surplus Productivity (promulgated by the Nat'l Dev. & Reform Comm'n, the St. EPA et al., Apr. 10, 2006), available at <http://tzs.ndrc.gov.cn/xkxmqj/xkxmyj/W020060802514047201169.doc>.

16. Guidelines on the Speeding Up of Structural Adjustment of Aluminum Industry (promulgated by the Nat'l Dev. & Reform Comm'n, the St. EPA et al., Apr. 11, 2006), available at http://tzs.ndrc.gov.cn/xkxmqj/xkxmyj/t20060429_78931.htm.

17. Guidelines on the Speeding Up of Structural Adjustment of Cement Industry (promulgated by the Nat'l Dev. & Reform Comm'n, the St. EPA et al., Apr. 13, 2006), available at http://tzs.ndrc.gov.cn/xkxmqj/xkxmyj/t20060425_78929.htm.

18. Guidelines on the Speeding Up of Structural Adjustment of Electricity Industry and the Promotion of Its Healthy and Orderly Development (promulgated by the Nat'l Dev. & Reform Comm'n, the St. EPA et al., Apr. 18, 2006), available at http://tzs.ndrc.gov.cn/xkxmqj/xkxmyj/t20060526_78936.htm.

19. Guidelines on the Speeding Up of Structural Adjustment of Calcium Carbide Industry (promulgated by the Nat'l Dev. & Reform

Comm'n, the St. EPA et al., Apr. 21, 2006), available at http://tzs.ndrc.gov.cn/xkxmqj/xkxmyj/t20060511_78935.htm.

20. Guidelines on the Speeding Up of Structural Adjustment of Textile Industry and the Promotion of Industry Upgrading (promulgated by the Nat'l Dev. & Reform Comm'n, the St. EPA et al., Apr. 29, 2006), available at http://tzs.ndrc.gov.cn/xkxmqj/xkxmyj/t20060530_78933.htm.

21. Circular on Controlling Quantity, Eliminating Outdated Technology, and Speeding Up Structural Adjustment of Steel Industry (promulgated by the Nat'l Dev. & Reform Comm'n, the St. EPA et al., June 14, 2006), available at http://tzs.ndrc.gov.cn/xkxmqj/xkxmyj/t20060717_78928.htm.

22. Circulation on the Straightening Out Coke Industry (promulgated by the Nat'l Dev. & Reform Comm'n, the St. EPA et al., May 27, 2004), available at http://www.ndrc.gov.cn/zcfb/zcfbtz/zcfbtz2004/t20050613_7009.htm.

23. Guidelines on the Prevention of Blind Investment in Copper Smelting Industry (promulgated by the Nat'l Dev. & Reform Comm'n, the St. EPA et al., Nov. 3, 2005), available at http://www.ndrc.gov.cn/cyfl/zcfg/t20051124_50924.htm.

24. Guidelines on the Examination of New Projects (promulgated by the Nat'l Dev. & Reform Comm'n, the St. EPA et al., Aug. 1, 2006), at http://www.ndrc.gov.cn/zcfb/zcfbtz/tz2006/t20060802_79468.htm.

25. Rules on the Evaluation and Management of Resources Comprehensive Use Encouraged by the State (promulgated by the Nat'l Dev. & Reform Comm'n, the St. EPA et al., Sept. 7, 2006), available at http://www.gov.cn/zwgk/2006-09/13/content_387619.htm.

26. Opinions on the Speeding Up of Recycling Economy (issued by the St. Council July 2, 2005), available at http://www.gov.cn/zwgk/2005-09/08/content_30305.htm.

27. Circular of the Ministry of Finance and the State Administration of Taxation on Adjusting and Perfecting Consumption Tax Policy (promulgated by the Ministry of Fin. & the St. Admin. of Tax'n, Mar. 20, 2006, effective Apr. 1, 2006), available at <http://www.mofcom.gov.cn/aarticle/b/g/200605/20060502180986.html>.

justed, ranging from 5% to 20%. The consumption tax policy changes give a clear signal that the government discourages consumption that puts excessive pressure on resources.

A detailed list of taxable items is listed below:

Table 1

Goods	Rate
Golf club and golf balls	10%
Luxury timepieces	20%
Yachts	10%
One-off wood chopsticks	5%
Wood flooring	5%
Naphtha	RMB 0.2/liter
Solvent oil	RMB 0.2/liter
Lubricating oil	RMB 0.2/liter
Aircraft diesel	RMB 0.1/liter
Passenger cars (1): $X < 1.5$ liter	3%
Passenger cars (2): $1.5 \leq X \leq 2.0$ liter	5%
Passenger cars (3): $2.0 < X \leq 2.5$ liter	9%
Passenger cars (4): $2.5 < X \leq 3.0$ liter	12%
Passenger cars (5): $3.0 < X \leq 4.0$ liter	15%
Passenger cars (6): $X > 4.0$ liter	20%
Medium Commercial Passenger Cars	5%
Motorcycles < 250 ml	3%
Motorcycles < 250 ml	10%
Automobile tires	3%
Cereal- or sweet potato-generated liquor	20% or RMB 1/kg

The government also issued guidelines for purchases made with public funds to encourage the government to buy environment-friendly products. On October 24, 2006, the Ministry of Finance and the SEPA jointly issued Opinions on Governmental Purchases of Products With Environmental Labels.²⁸ The new rule requires that when making purchases with public funds, governmental agencies and public institutions should give priority to products with environmental labels and should not purchase products endangering the environment and human health. The new rule also provides the first Government Purchase List of Products With Environmental Labels, including 14 categories of more than 1,000 products.²⁹ The Ministry of Finance and the SEPA will adjust the list from time to time and publish

28. Opinions on Governmental Purchases of Products With Environmental Labels (issued by the Ministry of Fin. & the St. EPA, Oct. 24, 2006), available at http://www.sepa.gov.cn/law/gz/bmhb/200611/t20061116_96090.htm.

29. Government Purchase List of Products With Environmental Labels (promulgated by the Ministry of Fin. & the St. EPA, Oct. 24, 2006), available at <http://www.sepa.gov.cn/ztbd/bzpcpgqd/>.

the list on three designated websites: (1) the China Governmental Purchase website at <http://www.ccgp.gov.cn>; (2) the SEPA website at <http://www.sepa.gov.cn>; and (3) the China Green Purchase website at <http://www.cgpn.cn>. This governmental purchase policy is expected to greatly affect the market and will have profound effects on relevant industries.

IV. Resource Conservation and Pollution Control Indicators

As mentioned above, the Eleventh Five-Year Plan Outline set some environmental protection and resource conservation targets. The detailed information is as follows³⁰:

Table 2

Targets	2005	2010	Annual growth (%)	Nature
National Population (million)	130756	136000		Binding
Reduction of energy consumption per unit GDP (%)			[20]	Binding
Reduction of water consumption per unit industry added value (%)			[30]	Binding
Efficiency rate of agricultural irrigation water	0.45	0.5	[0.05]	Predictive
Comprehensive use rate of industrial solid waste (%)	55.8	60	[4.2]	Predictive
Farmland (million acres)	122	120	-0.3	Binding
Total reduction of main pollutants discharge (%)			[10]	Binding
Forest coverage (%)	18.2	20	[1.8]	Binding

Numbers with [] are aggregate numbers for the five years from 2006 to 2010; main pollutants include SO₂ and COD. Predictive targets are development targets expected by the state, whose materialization mainly depends on the active participation of market participants. For the achievement of these predictive targets, the government shall create appropriate macro-economic environments, institutional environments, and market environments, make timely adjustments of the directions and strength of macro-economic regulation, and use comprehensive policy tools to direct the allocation of social resources. The government shall exert its best effort for the achievement of these targets.

Binding targets are targets which further specify and strengthen the responsibility of the government. Binding targets are work requirements imposed by the Central Government on local governments and branches of the Central Government as to public services and aspects related to public interests. The government shall ensure their achievement with appropriate allocation of public resources and effective use of administrative force.

So far, the policy change has not brought about pollutant discharge reduction at the national level. According to the

30. Eleventh Five-Year Plan Outline, *supra* note 2.

statistics, in the first six months of 2006, the national overall discharges of wastewater, COD, and SO₂ were as follows³¹:

Table 3

Discharges	Quantity	Increase compared with the corresponding period of 2005
Wastewater	12040 million tons	2.4%
COD	6.896 million tons	3.7%
SO ₂	12.746 million tons	4.2%

The discharge increase was mainly due to the GDP increase, which was 10.9% for the first six months of 2006.³² The increase in the first six months of 2006 might be explained by the time lag of the effect of new policies.

The good news is that the pollutant discharge increase slowed down in the second half of 2006, as shown below³³:

Table 4

Discharges	Quantity	Annual increase from 2005
Wastewater	Not available now	Not available now
COD	14.313 million tons	1.2%
SO ₂	25.944 million tons	1.8%

31. Public Report of National Overall Pollutants Discharge of First Half of 2006 (issued by the St. EPA, the St. Stat. Bureau & the Nat'l Dev. & Reform Comm'n, Aug. 30, 2006), *available at* http://www.sepa.gov.cn/plan/gongwen/200608/t20060830_91993.htm.

32. *Id.*

33. Shengxian Zhou, Minister, St. EPA, Speech on Main Pollutants Discharge Situation Analysis Conference (held at Beijing discussing the current situations, the determination to achieve pollutant discharge reduction targets, and the measures to be taken in the future) (Feb. 28, 2007), *available at* http://www.sepa.gov.cn/hjyw/200702/t20070228_101149.htm. However, the official figures, as examined by the State Statistics Bureau, have not been released yet. The slowing down of the latter six months can be inferred from the lower increasing rates for the whole year, compared with the higher increasing rates for the first six months.

Even though the increase speed has slowed, the main pollutants discharge reduction still fell short of plan, as the target was a decrease of 2%. If the speed of discharge increase is the same in the future, it will be impossible to achieve relevant binding targets.

However, compared with the national overall increase of main pollutants, Jiangsu Province achieved a reduction of annual discharge of COD and SO₂ at the rate of 3% and 3.6%, respectively.³⁴ Jiangsu Province is a well-developed province in the southeastern part of China, very close to Shanghai. This reduction is mainly because of the change of industry structures.³⁵ The achievements of Jiangsu Province prove that economic development does not necessarily lead to increased pollutant discharges. However, this number has not been confirmed by the SEPA. The numbers of other provinces are not available because on January 22, 2007, the SEPA issued an order forbidding local governments from releasing the local numbers before the national number has been officially released. The order also provides that the numbers regarding local main pollutants discharge quantities shall be released to the public by the SEPA, not its local subsidiaries.³⁶

V. Future Development

Environmental protection and resource conservation continue to be a key issue for the sustainable development of China. Over the next five years, China will witness a great transition, involving more effective measures to help ensure a healthier environment. With the government's plans to continue passing laws and regulations to advance environmental protection and resource conservation, there is much to expect for 2007.

34. *Jiangsu Achieved Pollutants Discharge Double Decrease in 2006*, XINHUANET, Jan. 6, 2006, *available at* http://news.xinhuanet.com/local/2007-01/06/content_5572320.htm.

35. *Id.*

36. Circular Against Releasing Main Pollutants Discharge Reduction Data Without Permission (promulgated by the St. EPA, the St. Stat. Bureau & the Nat'l Dev. & Reform Comm'n, Jan. 22, 2007), *available at* http://www.sepa.gov.cn/info/gw/huangfa/200701/t20070124_100181.htm.