

Symposium on Environmental Law and Regulation
US EPA Office of General Counsel – Tsinghua University Environmental Policy
Institute
April, 2008

US Environmental Law

The symposium included discussion of aspects of U.S. environmental law potentially relevant to China. This discussion was framed around 3 key aspects of US environmental law: relations between EPA and the 50 US states or “federalism,” use of permitting systems to control pollution levels, and public participation in environmental decision-making.

In the U.S. system of “Cooperative Federalism,” generally the national government sets the minimum environmental standards and goals while states can often be more protective. There are numerous points of leverage between the Federal government and the States to promote effective implementation. In China the central government also sets goals and gives instructions while the local level is primarily responsible for implementation.

Participants discussed the basic legal framework for translating national standards into precise discharge limits for individual facilities. The “cooperative” relationship was illustrated in the context of Water Quality Standards, where states designate appropriate “use” of water bodies and set standards (“criteria”) necessary to support such uses, i.e. the concentration of a particular pollutant that would be consistent with the designated use of a stream. Pollutant criteria may be more stringent for uses such as human fish consumption and recreational swimming, and less stringent for uses such as crop irrigation. Both the designated uses and the discharge permits are subject to review by EPA, illustrating the “oversight” aspect of the cooperative federal-state relationship.

While China has undergone similar evolution (over a comparatively compressed timeframe), there are significant differences between the systems. For example, the role citizen suits have played in the U.S., of holding government accountable and ensuring environmental policies get implemented was contrasted with the absence, in Chinese environmental laws, of similar legal provisions.

Another difference is the greater role of the planning system in China. There is an effort to increasingly condition funding and promotion of local officials on progress in meeting environmental, as well as economic targets.

Public Participation plays a central role in the U.S. system, including petitions for government action and ability to seek judicial review under the Administrative Procedure Act and environmental statutes, access to information under the Freedom of Information Act, and use of advisory committees under the Federal Advisory Committee Act. There was discussion of an EPA example involving a petition in which an NGO sought rulemaking to gather information on the health impacts of ingredients of certain consumer products.

The issue of how to best learn from US experiences was raised – often Chinese and U.S. experts share information on mutual problems but pay less attention to fundamental differences between the countries. For example, some participants expressed concern that without reform of the legal system, including strengthening judicial independence and authority, there will be no solution of China’s environmental challenges. Not only are the systems different, but the conditions are different as well.

The extremely compact timeframe in which China is striving to develop its regulatory system adds to the challenge and the process of globalization raises the stakes. Recent and ongoing efforts include the national government moving “from player to referee,” strengthening regulatory agencies, providing mechanisms for government to be challenged in court (Administrative Litigation Law and Administrative Procedures Law), and some provisions for public participation. However, challenges remain, including lack of clear mandates, fragmentation of regulatory authorities, and questions concerning the authority of public work units providing much of the staffing for environmental agencies.

Center-Local Relations and MEP Regional Centers

A key issue is strengthening local supervision (regulation). Participants identified the need for clearer definition of central and local responsibilities and for authority and supervision to be strengthened. Different meanings of the term “supervision” were discussed – it can refer to oversight / monitoring of local jurisdictions but can also mean implementation of requirements.

There is debate about whether the MEP Regional Supervision Centers should focus primarily on oversight of regulatory agencies themselves or get involved directly in ensuring compliance by enterprises. MEP Regional Centers are each expected to have a few dozen staffers, performing functions of oversight of local and provincial Environmental Protection Bureaus (EPBs), emergency response, coordination on cross-boundary issues, handling complaints, and checking of the pollution sources.

Major challenges facing the regional centers include unclear legal status and unclear relations to local EPBs, unclear, vague descriptions of responsibilities, and resources limitations. Possible solutions discussed included developing relevant laws to support legal status of Regional Centers, provide enough authority to achieve their responsibilities, and improve financing and accountability system.

Symposium Speakers and Discussants

Expert speakers and discussants at the symposium included:

Qi Ye, Director of Tsinghua Environmental Policy Institute
Xia Guang, Ministry of Environmental Protection Policy Research Center
Wang Jinnan, Chinese Academy for Environmental Planning
Zhang Jianming, South China RSC
Lu Xiaobo, Columbia University

Wang Mingyuan, Tsinghua University

Dan Guttman, Peking University School of Law and Tsinghua University China-America Center

Bob Percival, University of Maryland Environmental Law Program

David Moskowitz, Energy Foundation:

Hyeon-Ju Rho and Allison Moore, American Bar Association

Roger Martella, US EPA General Counsel

Byron Brown, US EPA Deputy Associate General Counsel

Steve Wolfson US EPA Office of General Counsel