

China's Environmental Super Ministry Reform: Background, Challenges, and the Future

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Editors' Summary

In March 2008, the Chinese National People's Congress elevated the former State Environmental Protection Administration to the Ministry of Environmental Protection. The reform strengthens the environmental protection sector's administrative stability, political will, decisionmaking power, and access to resources. However, the new Ministry confronts insufficient legislation, ambiguous authority allocation, and weak central-local management. Future reform needs to focus on administrative law legislation and language clarification for existing regulations, establishment of collaborative frameworks, and application of incentive-based approaches to central-local relationships.

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On March 15, 2008, China's Eleventh National People's Congress passed the super ministry reform (SMR) motion proposed by the State Council and created five "super ministries," mostly combinations of two or more previous ministries or departments. The main purpose of this SMR was to avoid overlapping governmental responsibilities by combining departments with similar authority and closely related functions. One of the highlights was the elevation of the State Environmental Protection Administration (SEPA) to the Ministry of Environmental Protection (MEP), which we also refer to as the environmental SMR.

The reference to super ministry is shorthand for the creation of a "comprehensive responsibilities super administrative ministry framework."¹ In order to promote comprehensive management and coordination, several departments are merged into a new entity, the super ministry, based on their similar goals and responsibilities. By enlarging the ministry's responsibilities and authority, the reform essentially turns some inter-departmental tasks to intradepartmental issues, so one single department can cope with comprehensive problems from multiple perspectives, avoiding overlapping responsibilities and authority. Thus, administrative efficiency is increased and administrative costs are reduced.

During this SMR, MEP was upgraded and was the only department to retain its organizational structure and governmental responsibilities.² This demonstrates the strong political will and commitment of China's central government to environmental protection.

This Article first introduces the background of the SMR, followed by a discussion of the motivations and positive impacts of the SMR in the environmental protection sector. The Article then analyzes significant problems of the current environmental protection administrative framework, which the environmental SMR can potentially solve but so far has not touched. Finally, the Article presents recommendations on key issues for future development.³

1. Although there have been many explanations of "super ministry," the most common is the creation of a single ministry combining overlapping or closely related departmental responsibilities. See SHI Yajun & SHI Zhengwen, *Several Thoughts on Promoting the Reform of "Super Ministry"*, 2 CHINESE PUB. ADMIN. 9-11 (2008); SHI Xuehua & SUN Fafeng, *On Preventing Negative Effects of "Super Ministry"*, 3 CHINESE PUB. ADMIN. 29-32 (2008); People's Daily, the Official Chinese Central News Agency, *What Is "Super Ministry"?*, <http://gov.people.com.cn/GB/46728/114889/index.html> (last visited Dec. 21, 2008).
2. HUA Jianmin, State Councilor and Secretary-General, *Instruction on Institutional Reform of China State Council*, Mar. 11, 2008, http://www.chinaorg.cn/zl/zl/2008-03/12/content_5190487.htm (last visited Dec. 21, 2008).
3. There is a lot of literature on government institutional reforms in China, but not much on the SMR. As of June 9, 2008, the representative articles on China's SMR were the following: CHEN Tianxiang, *A Frame With Big Departments: A New Rout for Reforming the Governmental Institutions*, 2 ACAD. RES. 40-47 (2008); ZHANG Chuangxin, *The Analysis on the Relations Between Big Ministry and Small Government*, 5 CHINESE PUB. ADMIN. 36-38 (2008); CHEN Wei, *The Thinking of Certain Questions for "Super Ministries System Reform"*, 2 J. SICHUAN ADMIN. C. 22-24 (2008); WANG Yukai, *Analysis on "Super Ministry" Reform in China and Its Challenges*, 3 TRIB. STUDY 52-55 (2008); SHI Yajun & SHI Zhengwen, *supra* note 1. However, none of these focus on environmental SMR.

I. Background of Environmental Institutional Reform in China

A. Development of Institutional Reform in China's Environmental Protection Sector

China's national environmental protection framework was formally created in the early 1970s. Since then, it has been through three major stages: (1) formation; (2) expansion; and (3) stabilization.⁴

1. The First Stage: Formation

No formal independent national entity specializing in environmental protection existed in China before 1972, and different governmental entities were allocated environmental protection responsibilities.

In response to the United Nations' announcement of the Human Environment Declaration, China hosted its first National Environmental Protection Conference on August 5, 1973. As a result, the Environmental Protection Leadership Commission was formed to manage and coordinate national environmental tasks. The members of this commission were the heads of more than 20 related national departments.

In 1978, China amended its constitution to add the following statement: "The state protects the environment and natural resources, and prevents and controls pollution and other public hazards."⁵ This formed the constitutional foundation for the country's environmental administrative framework.

The following year, China enacted the Environmental Protection Law (for Trial Implementation) based on the revised constitution. This law included a chapter on the governmental structure and responsibilities, which required all related departments under the State Council, as well as provincial and municipal governments, to set up specialized environmental protection and supervision institutes. China's environmental protection framework was thereby formally enacted into law.

2. The Second Stage: The Expansion

China conducted its first national administrative reform after the transformation of the market system in the early 1980s.⁶ As part of these reforms, the Environmental Protection Leadership Commission was dissolved and the Environmental Protection Agency was set up as part of the newly formed

Ministry of Urban Construction and Environmental Protection. Therefore, environmental protection now fell under the category of urban construction, making the government's responsibility to protect the environment secondary.⁷

In order to solve this problem, the State Council released the Decision on Strengthening Environmental Protection Functions in 1984, which established the Environmental Protection Commission under the State Council.⁸ In December of the same year, the Environmental Protection Department under the Ministry of Urban Construction and Environmental Protection was upgraded in status to the National Environmental Protection Agency, which was the Environmental Protection Commission's executive office under the State Council. Directly under the command of the State Council, the State Environmental Protection Agency was responsible for managing and supervising the environmental protection tasks throughout the country.

3. The Third Stage: Stabilization

In 1989, the Standing Committee of the National People's Congress set up the administrative framework by making the 1979 Environmental Protection Law permanent. This decision strengthened the governmental responsibility and authority over environmental protection.

During the fourth national administrative reform in 1998, the State Environmental Protection Agency was upgraded in national administrative ranking to the State Environmental Protection Administration (SEPA). However, although SEPA was directly under the State Council's control, it was still not at the cabinet level and did not have a vote in the Council's decisions.⁹

In March 2008, SEPA was upgraded again to formal ministry status as the MEP (or also called SMR). It now has a vote in the State Council's decisionmaking process. Since its status as a cabinet member is protected by law and cannot be readily changed by the State Council, the MEP's status as the central environmental protection entity has become stabilized.

4. Status of the MEP in the National Administrative Structure

The Organization for Economic Cooperation and Development (OECD) has conducted a study on the strengths and weaknesses of national environmental protection organizational structures.¹⁰ It identifies four categories of national

4. LI Huiling, *Discussion on China's Environmental Supervision and Management System*, 5 J. HUNAN POL.-LEGAL CADRE C. 53-56 (2005).

5. China Constitution, art. 11 (1978), available at <http://xfx.jpkc.gdccc.edu.cn/show.aspx?id=289&cid=27>.

6. For more information on China's major national administrative reform, please visit China Organization Net, *Homepage*, http://www.chinaorg.cn/zt/zt/node_103761.htm (last visited Dec. 28, 2008).

7. HAN DEPEI, *ENVIRONMENTAL LAW* 51 (Beijing: Law Press Co. 2003).

8. Decision on Strengthening Environmental Protection Functions, by Chinese State Council, May 8, 1984, available at <http://www.gxepb.gov.cn/web/2002-01/17261.htm>.

9. China Organic Law of State Council, arts. 2, 8, and 11.

10. OECD, *A MODEL FOR ENVIRONMENTAL ADMINISTRATION IN DEVELOPING COUNTRIES* (1988).

environmental administration structures, based on the interdepartmental relationship within the administrative system: (1) departments within the office of the head of government; (2) separate ministries; (3) departments within existing ministries; and (4) environmental departments in different ministries.¹¹

After the SMR, China's system now has adopted the second type of structure—a separate ministry. According to the OECD, the main strengths of this structure are: (1) a high administrative ranking evidencing the country's dedication and political will to protect the environment and natural resources; (2) more resources and authority available for environment-related tasks; (3) national policies that are more likely to take environmental issues into account since the environmental department has more significant status within the governmental system; and (4) conflicts with other areas of the government are interdepartmental so environmental interests are less likely to be ignored.¹²

On the other hand, obvious weaknesses of this arrangement include: (1) difficulties in cooperating and bargaining with other ministries; and (2) the potential for isolation and confronting barriers in information gathering and sharing.¹³

The advantages and challenges of the MEP are explored further in the third and fourth part of this Article.

B. Reasons for the Environmental SMR

The formation, expansion, and stabilization of the administrative environmental protection entity at the national level are mostly a result of the deterioration of environmental quality and insufficiency of environmental protection implementation. In other words, the increasing seriousness of environmental problems makes the environmental protection sector more important.

1. Deterioration of Environmental Quality

In 2007, China's central government announced that China had failed to meet the environmental protection targets in the Tenth Five-Year Plan. While some aspects of China's natural environment have partially improved, overall, there has been significant deterioration.¹⁴ Continuous environmental deterioration weakens the country's economic health and sustainable development and threatens public health.

Environmental pollution and loss of natural resources in China is very serious. Destruction of major resources vital for living and sustainable development, such as water, air, and soil, has reached historically high levels. According to the 2006 *Report on the State of the Environment in China*, groundwater is largely polluted. Only 40% remains suitable for drinking or fishing, and 28% cannot be used even for industrial purposes. In addition, 43.4% of the country's air quality does not meet

the second level of the national standards; in other words, these areas are safe for industrial areas but not residential.¹⁵

Serious environmental pollution is threatening the public health of the country. Due to significant water pollution, about 81 million people in 113,000 villages were at risk for being poisoned and about 15,000 people in 425 villages have been poisoned by chronic arsenic contamination. Air pollution has also caused severe public health problems. Skeletal fluorosis—a bone disease caused by fluoride—has afflicted 196,000 people in 35,672 villages, and 16,000 people in 276 villages were poisoned by chronic arsenic. These diseases are caused primarily by air pollution from coal-burning.¹⁶

In sum, pollution has caused not only economic losses, but also serious public health problems, and is threatening people's lives, especially the most vulnerable groups. As a result, in addition to direct economic losses, pollution also causes regional unrest and is the main driving force behind the environmental SMR.

2. Insufficiency of Environmental Protection Implementation

As we will discuss in the next part of the Article, insufficient legislation, immature management institutions, and a lack of management capacity, are the main reasons for weak environmental protection implementation, which has caused frequent environmental accidents in China.

In 2006, SEPA received 161 reports of environmental emergencies, 85 more than in 2005. Among these accidents, 95 were related to water, 57 to air, and 7 to soil, which was 59.0%, 35.4%, and 4.4% of the total amount, respectively.¹⁷

The trend of environmental emergencies in China shows, first, that the number of environmental emergencies is rising. The 2006 number increased by more than 100% compared to 2005. On average, it meant one environmental accident occurred every other day; and second, that environmental accidents have tremendous negative effects on public health. Since 94.4% of all emergencies were either water or air related, they created significant threats to people's lives.¹⁸

II. Positive Impacts of SMR in the Environmental Protection Sector

With the authority to vote on the State Council's decisions, the MEP is expected to have more weight and influence on the country's social and economic affairs. Its increasing impacts can be demonstrated from four perspectives: (1) institutional; (2) political; (3) policymaking; and (4) implementation.

A. Institutional Perspective: Increased Stability

Upgraded to ministry status at the cabinet level, the MEP is now protected by the Organic Law of the State Council.

11. *Id.*

12. *Id.*

13. *Id.*

14. SEPA, SEPA ANNOUNCED THE PERFORMANCE OF ENVIRONMENTAL GOALS IN THE TENTH FIVE-YEAR PLAN (2006), available at http://www.sepa.gov.cn/xcyj/zwhb/200604/t20060412_75714.htm.

15. SEPA, 2006 REPORT ON THE STATE OF THE ENVIRONMENT IN CHINA 5, 43 (2007).

16. *Id.* at 81.

17. *Id.* at 53.

18. *Id.*

According to this law, any modification of entities directly under State Council's control is totally within the State Council's authority and needs no other approval; yet the formation, elimination, and combination of any ministry with voting rights at the cabinet level must be proposed by the Prime Minister and approved by the National People's Congress or its Commission.¹⁹

Before this reform, SEPA had been through several adjustments, from an "office" to an "agency" to an "administration," yet its legal status was unstable because the system arrangement allowed the State Council to change its institutional structure at will. As a ministry, the MEP should encounter fewer institutional changes. Therefore, we can expect more intuitional stability and less modification within the national environmental protection framework.

B. Political Perspective: Stronger Political Will for Environmental Protection

Max Weber's theory on bureaucratization reveals the importance of the administrative level within a bureaucratic system. This level in a sense determines the resources available to the entity, such as money, materials, and human capital or even power, reputation, and privilege.²⁰ This applies to both western and eastern countries. Moreover, due to the political tradition to obey authority, administrative rank carries even greater weight in China.

China's traditional Confucian philosophy still has broad and deep influence on all aspects of modern life in the country, including the political system. According to Confucius, everyone has his role in a hierarchy and he should behave accordingly. The core principles state: "[T]he emperor should act like an emperor; an officer should act like an officer; a father should act like a father; and a son should act like a son" (junjun, chenchen, fufu, zizi) and "every affair, regardless of importance, should be decided by the superior" (shi wu da xiao jie qu jue yu shang). Scholars call this phenomenon of blind obedience to the superior, "political level decides all" (fan zheng zhi hua).²¹

Furthermore, China still applies the administrative-level system to entities outside the governmental system. For example, all state-owned enterprises are part of this political ranking system and each has an administrative rank equivalent to the governmental owner's ranking. Under the culture and political atmosphere of "political level decides all," one level of difference makes a significant difference in decisionmaking and implementation authority. Before SEPA became the MEP, it was not on the highest level within the Chinese administrative system, and certain state-owned enterprises were of the same or even higher administrative levels. Within this political system, some large state-owned enterprises completely ignored

the orders and requirements of SEPA and thus environmental protection policies were very difficult to implement.

The 2005 "environmental storm" provides a useful example.²² In January 2005, SEPA published a list of 30 major national construction projects that violated the 2003 Environmental Impact Assessment Law and required them to suspend construction until they conducted an environmental impact assessment to obtain approval. The media called it the environmental storm. Some of those construction projects were sponsored by state-owned enterprises at the highest governmental level, such as the China Three Gorges Project Co. and the State Electricity Co. The representatives of these corporations are in the same administrative level, if not higher, than the Administrator of then-SEPA. In practice, these corporations did not seriously consider environmental requirements and sometimes started projects without conducting an assessment at all. If noticed, they could easily get around environmental requirements by obtaining approval after-the-fact. In this case, the Three Gorges Dam Project Company, of the same administrative level as SEPA, completed ignored SEPA's instruction to suspend and continue construction. It is not surprising that the media commented that the environmental storm had "started abruptly and ended hastily" before it could "follow through at the end."²³

Many factors contributed to the companies' cavalier attitude towards the environmental requirement²⁴; however, political reasons, such as administrative level and lack of authority within the bureaucratic system, were decisive. Shu has remarked that "environmental protection is more than an environmental problem; it is also a political problem, an economic problem and a social problem."²⁵ In China's "economy-development-centered" political atmosphere, the environmental protection sector was of lower priority. This was a political issue and should have been solved by political approaches.

Upgraded from SEPA to the MEP and granted cabinet voting power, the MEP is anticipated to gain significantly more power within the political system, which is crucial in China's political culture.

22. "Environmental storm" refers to a national enforcement of Environmental Impact Assessment Law (EIAL) by SEPA in 2005. On January 18, 2005, SEPA issued an order to suspend the construction of 30 major national projects that were in violation of the EIAL in order to maintain the authority of the legislation. See XIONG Zhihong, "Environmental Storm" in 2005, CHINA NET, <http://www.china.com.cn/chinese/zhuanti/hjwj/1164411.htm> (last visited Dec. 21, 2008).

23. As a matter of fact, 29 out of the 30 suspended projects resumed construction after the suspension.

Sina News, *29 Out of the 30 Projected Were Suspended Due to Violation of Environmental Assessment Requirements Resume*, <http://news.sina.com.cn/c/2005-04-17/04485670213s.shtml> (last visited Dec. 21, 2008).

24. Most discussions on barriers on environmental protections are focused on the conflicting interest between local and national government, local protectionism, economic development as indicator of local officers' performance, and faults in environmental legislation, yet not much has been discussed from the perspective of administrative culture or administrative level.

25. SHU Shengxiang, *Environmental Protection Issues Have Always Been Political Issues*, 1 GREEN WORLD 16 (2007).

19. China Organic Law of State Council, arts. 8 & 11.

20. MAX WEBER, *ECONOMY AND SOCIETY: AN OUTLINE OF INTERPRETIVE SOCIOLOGY* (University of California Press 1978).

21. GAO Yun, *Analysis on Positive and Negative Impacts of Traditional Administrative Culture to Construction of Harmonious Society*, 6 THEORETICAL EXPLORATION 129-31 (2005).

C. Policymaking Perspective: Environmental Consideration in National Decisionmaking

Environmental issues should be taken into account in decisionmaking because they can have significant short-term and long-term impacts on economic development and public health. Fortunately, now the MEP has direct authority to influence the State Council's decisionmaking, whereas before the reform SEPA did not.

EPL Article 7 requires "the competent department of environmental protection administration under the State Council" to "conduct unified supervision and management of the environmental protection work throughout the country." It grants the environmental protection entity under the State Council the authority to decide environment-related issues in the country. But according to the Organic Law for the State Council and the Working Rules of the State Council, entities directly under the State Council's instruction, such as SEPA, cannot participate in the State Council's annual meeting, during which all the important national decisions are made, unless invited to testify. Originally, SEPA was allowed only to sit in the annual meeting and give its opinions based on the need of the State Council. However, the latter had complete discretion to decide whether or not to adopt SEPA's suggestion. Consequently, SEPA did not have direct influence in the country's major decisionmaking process and environmental perspectives could easily be ignored.

Consider the environmental impact assessment (EIA) for the National Economic and Social Development Plan, also known as the Five-Year Plan (FYP). The FYP, which is promulgated every five years, is the most important strategic planning document in China because it outlines the government's priorities for a set period.²⁶ According to the EIAL Chapter 2, an EIA is to be conducted as part of any government planning, yet this requirement does not apply to the FYP.²⁷ Fortunately, the upgrade of the MEP addresses this problem to some extent. According to the Organic Law of the State Council Article 17, the State Council and Ministries at its cabinet level have the authority to decide major national economic and social development plans and the national budget. With this power, the MEP should be able to use the cabinet conferences as a platform to promote and apply environmental requirements to national planning efforts, such as potentially involving more EIA requirements in national planning process and constructions.

As a ministry, the MEP has the legal authority to vote in State Council's decisions and its opinions will likely not become marginalized. In other words, environmental considerations are more likely to be taken seriously in major deci-

sionmaking in China and may compensate for some defects in the law.

D. Implementation Perspective; More Resources Available

An administrative upgrade is expected to strengthen the implementation capacity of the MEP. China's several previous administrative reforms²⁸ show that the creation of new administrative branches, elevation of existing departments, or increases of department budgets are the common approaches to enhance the administrative implementation power in areas with serious problems.

Consider the coal mining sector. Only 35% of the world's coal is produced in China, yet 80% of coal mine death tolls are in this country.²⁹ In order to enhance safety supervision and improve coal mine safety, China's State Council decided to set up a vice ministry-level agency called the State Bureau of Work Safety, also referred to as the State Bureau of Coal Mine Safety, and increased its number of employees to 192. In 2005 during a spate of coal mine accidents, the State Council elevated the State Bureau of Work Safety to full ministry rank as the State Administration of Work Safety (SAWS). It also set up a separate vice ministry-level State Bureau of Coal Mine Safety within SAWS. The restructuring aimed to signify the importance of coal mine safety and improve supervision of work safety. It also increased the staff number of SAWS to 228. The 2005 restructuring did improve work safety supervision significantly by discovering and correcting a large number of hidden problems and reducing the coal mine mortality rate from 2.84 per million tons in 2005 to 1.64 in the first ten months of 2007.³⁰

Compared to the situation of the State Bureau of Coal Mine Safety, it is reasonable to expect an enhanced capacity of the new MEP to meet the daunting challenges of environmental protection in China. We can also anticipate that the new MEP will receive more financial and personnel support from the central government thereby having greater capacity to implement the laws and improve environmental protection. Wang Yuqing, a member of the Chinese People Political Consultative Conference and the former vice minister of SEPA, was very confident about the new MEP and remarked:

The creation of MEP demonstrates the Chinese government's resolution to strengthen environmental protection and involve more officers who are familiar with environmental issues to participate in national decisionmaking. The upgrade of SEPA is a change of format, and will lead to improvement in human resources and functional structures of the department, which will be beneficial to environmental protection

26. SUN Youhai & DING Min, *Regulatory Environmental Impact Assessment Is Better Than "Environmental Storm,"* GREEN LEAVES, Dec. 2007, at 8-9.

27. China Environmental Impact Assessment Law (2002), English version available at <http://www.chinaenvironmentallaw.com/wp-content/uploads/2008/03/environmental-impact-assessment-law.doc> (Last visit December 30th, 2008). According to EIAL in China, environmental impact statements (EIS) of special programs such as industry, agriculture, animal husbandry, forestry, energy, water conservancy, communications, municipal construction, tourism, and natural resources are required; however, a comprehensive program such as the FYP is not required to prepare an EIS under this law.

28. For more information on China's major national administrative reform, please visit the China Organization Net at http://www.chinaorg.cn/zt/zt/node_103761.htm.

29. Sina News, *China State Safety Monitor Administration is Upgraded to Improve its Implementation Capacity*, <http://finance.sina.com.cn/g/20050227/15171387339.shtml> (last visited Dec. 21, 2008).

30. In 2005, 362,242 cases of hidden trouble in work safety were discovered and 95.4% were corrected; in the first 10 months of 2007, 793,170 cases of hidden trouble were discovered and 96.5% were corrected. Data is available at http://www.chinasafety.gov.cn/mjwe/2007-11/27/content_267714.htm

tasks. Furthermore, it would be easier for China to conduct international environmental cooperation. I believe MEP will not disappoint us.³¹

III. Challenges After the Environmental SMR

While the main purpose of the SMR is to reduce overlapping governmental responsibilities, increase efficiency, and reduce administrative costs, it is not the silver bullet for all problems.³² The environmental SMR has not touched upon the fundamental problems within the environmental management framework, and thus many fundamental conflicts have not been resolved.

A. The MEP Requires More Organic Laws and Regulations to Sustain Its Institutional Responsibility and Authority

Principles of democracy and the rule of law require that public administrative organizations be controlled by the law. Countries with a civil law system have administrative organic laws, which regulate the structure, framework, status, functions, and the procedure of formation, modification and elimination of governmental entities.

Administrative organic laws can be categorized into general administrative organic laws and sectoral administrative organic laws. Currently, China has two general administrative organic laws--the Organic Law of the State Council and the Organic Law of the Local People's Congresses and Local People's Governments. Yet none of them defines the features, authority and organizational procedure of the covered entities clearly.³³ As a result, administrative reform had been largely unregulated under the will of superior departments. The five-year cycle of the administrative reform within the central government is symptomatic of this problem: the national governmental structure changes every time the leadership changes.³⁴ In other words, the institutional structure at the

central level, especially departments under the State Council, is unstable due to insufficient procedural regulations on formation, modification and elimination.

There is no organic law for specific administrative sectors in China, such as environmental protection. Instead, this void has been filled by the Commission of Public Sector Reform (bian zhi wei yuan hui) at each government level. The organizational structure commission is responsible for making the "three determinations" (san ding fang an) for the government to determine the internal structure, the administrative responsibilities, and the human resources allocation of each governmental agency. Current administrative organic laws do not specify substantial or procedural requirements for the three determinations. Furthermore, these plans are only internal governmental documents with low governmental authority and can be changed easily at the will of the leaders or superiors.

Take the regional environmental supervision centers set up by SEPA as an example. In 2006, SEPA issued the Proposal on Establishing Environmental Supervision Centers of SEPA. The document established five regional environmental supervision centers in China, under SEPA's direct control: (1) eastern; (2) southern; (3) northwestern; (4) southwestern; and (5) northeastern.³⁵ However, the Environmental Protection Law does not give SEPA the authority to set up regional environmental supervision centers, nor does any other relevant legislation. The legitimacy of this practice--setting up inferior entities based only on internal policies but with no formal legal authority--is questionable. Due to the lack of legislative foundation, these regional centers directly rely on SEPA for their authority. SEPA has to grant them a special delegation of authority each time SEPA wants them to implement anything. This practice largely limits the capacity of those supervision centers.³⁶

Moreover, creating governmental institutions by internal policy or documentation is one of the main reasons for overlapping structures and authority. For instance, in the natural resources protection system, two separate governmental departments work in parallel: the Natural Resources Protection Department under the MEP and the Wild Animals and Vegetation Protection Department under State Forestry Administration.³⁷ As a result, in the area of wildlife protection, which is merely a part of natural resources protection, these two departments under different ministries have overlapping duties under discrete instructions. In addition, in the

31. Sina News, *Former SEPA Vice Administrator Believed that the Upgrade Would Improve SEPA's Capacity*, <http://news.sina.com.cn/c/2008-03-09/182715109776.shtml> (last visited Dec. 21, 2008).

32. ZHU Guanglei & JIA Yimeng, "Super Ministry Framework" Does NOT Solve All Problems, 3 CHINA REP. 69-71 (2008).

33. Article 11 of the Organic Law for the State Council does not give specific requirements on procedure or responsibility for the entities created by and directly under the instruction of the State Council.

34. According to the Constitutional Law of the Republic of China, the election for national government is conducted every five years. Accordingly, every time the election was conducted, the government carried out a national institutional reform. For more detailed information on each administrative reform please refer to China Organization Net, *Summary for 1982 Reform: Improve Government Efficiency, and Employ Younger Officers*, http://www.chinaorg.cn/zl/zl/2008-03/11/content_5190230.htm (last visited Dec. 21, 2008); *Summary for 1988 Reform: The Key Is to Transform Governmental Responsibilities*, http://www.chinaorg.cn/zl/zl/2008-03/11/content_5190231.htm (last visited Dec. 21, 2008); *Summary for 1993 Reform: To Meet the Needs of Development Socialist Market Economic*, http://www.chinaorg.cn/zl/zl/2008-03/11/content_5190232.htm (last visited Dec. 21, 2008); *Summary for 1998 Reform: To Separate Government Functions From Enterprise Functions of State-Owned Enterprises*, http://www.chinaorg.cn/zl/zl/2008-03/11/content_5190234.htm (last visited Dec. 21, 2008); *Summary for 2003 Reform: To Regulate Behavior, to Coordinate Operation, to Achieve Justice, Transparency, Integrity, and Efficiency*, [http://www.chinaorg.cn/zl/zl/2008-](http://www.chinaorg.cn/zl/zl/2008-03/11/content_5190235.htm)

[03/11/content_5190235.htm](http://www.chinaorg.cn/zl/zl/2008-03/11/content_5190235.htm) (last visited Dec. 21, 2008). This website is managed by the information center of State Commission for Public Sector Reform, the State Council.

35. SEPA, PLANS FOR ESTABLISHING SEPA SUPERVISION CENTER (2006).

36. Prof. WANG Canfa was delegated to investigate the Eastern and Southern Regional Supervision Center, and he concluded that lack of a high-profile legal basis for their authority was the first and foremost barrier. More information can be found on Justice Net, *Environmental Protection Supervision Center Cannot Enforce Law Without High-Profile Delegation*, <http://www.jcrb.com/200706/ca609349.htm> (last visited Dec. 21, 2008).

37. For responsibilities of Wildlife Protection Department of Ministry of Forestry, see the Ministry of Forestry website, <http://www.forestry.gov.cn/sub/FstList.aspx?id=jgjj.1000> (last visited Dec. 21, 2008). For responsibilities of Natural Resources Protection Department under the MEP, please refer to the MEP's website at http://www.sepa.gov.cn/dept/jgzrn/gszn/200301/t20030127_84363.htm (last visited Dec. 21, 2008).

environmental supervision sector, the MEP, the Ministry of Agriculture, and the Ministry of Water Resources all have individual monitoring systems related to water quality. The vicious circle of “simplifying—expanding—re-simplifying—re-expanding” demonstrated by the previous national administrative reforms is largely due to the lack of regulation and restriction from sectoral administrative organic laws.

Finally, since the documents that set up the government’s internal structure are just internal policies that do not have to undergo a careful legislative or administrative review process, they often lack serious consideration and planning. In fact, the inner structure within the same government entity can be irrational. For example, SEPA’s original structure assigned some of the same duties to several different offices. The Center of Pollution Control, the Department of Science and Technology, and the Environmental Supervision Center need to be restructured because they share the responsibility for monitoring emissions and environmental quality.³⁸ In addition, a lack of transparency also poses challenges to legitimacy.

B. Environmental SMR Cannot Solve the Ambiguous Horizontal Authority Allocation Among Different Departments

Horizontally, China’s Environmental Protection Law aims to build its environmental management framework with unified supervision and management by the environmental protection sector and divide responsibilities among specialized departments.³⁹

Due to the breadth of environmental problems, it is impractical and infeasible to make only the MEP responsible for all environmental issues. Although the upgrade of the MEP from SEPA improves the administrative status of the environmental protection sector and the importance of environmental goals, the reform itself does not change the challenge of divided authority among different departments.

Although the reform is easier to conduct without changing the current division of power, it has not solved the fundamental conflicts of overlapping authority between the environmental protection sector and other departments. These controversies are the most significant barriers to effective environmental implementation and enforcement. Overlaps exist

mostly in four areas: (1) pollution prevention and control; (2) environmental planning; (3) environmental standard setting; and (4) environmental monitoring.

1. Pollution Prevention and Control

The MEP has the united management authority within the areas of its jurisdiction; other departments have related implementation authority within their specialized sectors.⁴⁰ Since pollution happens in all areas of economic activities, including comprehensive air, water, noise, solid waste, radioactive materials, and marine pollution prevention and control, most governmental departments have authority related to pollution control implementation. Departments with administrative implementation authority related to pollution issues include, but are not limited to, policemen, transportation, railroad, fisheries, water resources, ocean, marine affairs, sanitation, mining, and macroeconomic management.⁴¹

2. Environmental Planning

Due to overlapping authority in environmental implementation, multiple departments are involved in environmental planning and implementation. Water resource planning in China is a good example of serious conflicts between the environmental protection sector and the water resources sector.

Water resource planning includes two dominant elements: (1) pollution prevention and control; and (2) management of water usage and development. However, these two components are administered separately and planning is under the control of different departments: the MEP and the Ministry of Water Resources, including inferior entities at the local level.

The Law of the People’s Republic of China on the Prevention and Control of Water Pollution and its Implementation Rules grant the MEP the authority to strategize on water pollution management. This should include defining area functions of water bodies.⁴² However, water law from the perspective of water usage authorizes the Ministry of Water Resources to define the environmental function of each water body.⁴³ The conflicts between the two planning authorities is obvious. Even though water environment planning and water usage planning serves different purposes, they focus on the same object and share the ultimate goal of maintaining high water quality.

In September 2002, SEPA issued the National Water Environmental Function Planning, which divided water bodies into seven categories: (1) natural protection area; (2) drinking water resource zone; (3) industrial and agricultural water source zone; (4) fishery zone; (5) landscape and entertaining water zone; (6) buffer zone; and (7) multi-function

38. Sina News cited an unidentified officer from the MEP who said that the original three determination plan for SEPA had caused overlapping responsibilities and thus needed to be changed. More information is available on Sina News, *MEP Is Likely to Set Up an Environmental Monitoring Bureau*, <http://news.sina.com.cn/c/2008-04-21/020515394858.shtml> (last visited Dec. 21, 2008).

39. According to Article 7 of the Environmental Protection Law 1989: “[U]nified supervision and management by the environmental protection sector means the competent departments of environmental protection administration of the local people’s governments at or above the county level shall conduct unified supervision and management of the environmental protection work within areas under their jurisdiction.” Under the same article, “divided responsibilities among specialized departments” requires the state administrative department of marine affairs, the harbor superintendence administration, the fisheries administration and fishing harbors superintendence agencies, the environmental protection department of the armed forces and the administrative department of public security, transportation, railways and civil aviation at various levels, in accordance with the provisions of relevant laws, to conduct supervision and management of the prevention and control of environmental pollution.

Environmental Protection Law, art. 7 (1989).

40. *Id.*

41. Air Pollution Prevention and Control Law, art. 4 (2000); Solid Waste Pollution and Control Law, art. 10 (2004); Water Pollution Prevention and Control Law, art. 4 (1996); Noise Prevention and Control Law, art. 6 (1996); Radioactive Material Pollution Prevention and Control Law, art. 8 (2003); and Marine Environment Protection Law, art. 5 (1999).

42. Water Pollution Prevention and Control Law, *supra* note 41, art. 10; and Implementation Rules of Water Pollution Prevention and Control Law, art. 2 (2000).

43. Water Law, art. 32 (2002).

zone. On the other hand, the Ministry of Water Resources announced the Regulatory Rules on Water Functional Zones and categorized all water environmental functions by 2 levels and 11 zones. Level One, which covers all water bodies in the country, contains four zones: (1) protection zone; (2) buffer zone; (3) development zone; and (4) reservation zone. Level Two only includes water bodies of development zones and includes seven different types: (1) drinking water zone; (2) industrial water zone; (3) agricultural water zone; (4) fishery zone; (5) landscape and entertaining water zone; (6) buffer zone; and (7) pollution control zone. Both zoning processes by the MEP and Ministry of Water Resources start at the municipal or provincial level water basin and then merge into the national planning process. Consequently, some water bodies comply with the MEP system, some obey the Ministry of Water Resources system, and some apply both. Because these categorizations have different standards and requirements for each zone, two distinct definitions potentially could apply to the same water body. As a result, not only water users are confused and find it hard to comply, but the MEP and Ministry of Water Resources also have serious conflicts with respect to pollution discharge standards and caps, as well as water quality standards and monitoring.

3. Environmental Standards Setting

Environmental standards refer to a set of technical requirements established to meet the environmental legislative goals of protecting environmental quality and controlling pollution. According to the Management Rules on Environmental Protection Standards enacted by the MEP, five types of environmental standards exist in China: (1) environmental quality standards; (2) pollution emission standards; (3) environmental monitoring methods and standards; (4) typical environmental sample standards; and (5) standard environmental basis. However, the Standardization Law assigns the Administration of Quality Supervision, Inspection, and Quarantine (AQSIQ) to the State Council with responsibility of standardizing national measurements and requirements, including environmental standards.⁴⁴ Consequently, China has two sets of applicable environmental standards promulgated by two separate government departments: (1) the MEP; and (2) the AQSIQ.⁴⁵ This overlap is particularly serious and can present some unsolvable conflicts for production quality standards. For example, vehicles can produce noise and gas emissions, and thus are mobile pollution sources, which are

under the jurisdiction of the MEP. At the same time, as consumer goods, vehicles are within the authority of the AQSIQ. Due to different legislative purposes, standards from these two departments are not the same.⁴⁶ As a result, even when the producers are complying with one set of standards, they might be violating the other.

4. Environmental Monitoring

Based on independent authority to set standards and to implement their own policy, the water resources, marine, fishery and agriculture departments, in addition to the MEP, each have legal authority in environmental supervision within their specialized area.

For instant, according to Water and Soil Conservation Law and its Implementation Rules, the Ministry of Water Resources is required to establish a water and soil conservation monitoring network. This network includes a national water and soil conservation monitoring center, major river basin water and soil conservation monitoring centers, provincial water and soil conservation monitoring stations, and pivot water and soil conservation branch stations. The Ministry of Water Resource investigates the dynamic loss of water and soil across the country based on its monitoring framework.⁴⁷ Meanwhile, the marine administrative department, authorized by the Marine Environmental Protection Law 1983, is responsible for investigating and monitoring water bodies in the ocean. Finally, the fishery department, endorsed by the Implementation Rules of Fishery Law, has the duty to monitor the water pollution situation in fishery areas and integrate the fishery environment protection monitoring network into the national environmental monitoring network.⁴⁸ As a result, if a water body is a fishery area on land, then the environmental protection sector, water resources department, and fishery department have authority over it; if a water body is in the ocean, then both the fishery department and the marine department have control over its monitoring. Consequently, even if all monitoring systems belong to the national environmental monitoring network, different implementation bodies might have distinct methodologies, measurement approaches, techniques, and professional standards. The data obtained from monitoring and the conclusions based upon them can be different or even conflicting.

Above are only some examples of conflicting and overlapping authority within the environmental protection sector and other sectors, yet the conclusion is clear. Significant conflicts in China's environmental management largely based on previous legislation are still prominent and the upgrade of the MEP has not solved the problem of repetitive and conflicting authority.

44. Article 5 of the Standardization Law of the People's Republic of China reads: [t]he department of standardization administration under the State Council shall be in charge of the unified administration of standardization throughout the country. Competent administrative authorities under the State Council shall, in line with their respective functions, be in charge of standardization in their respective departments and trades. The departments of standardization administration of provinces, autonomous regions and municipalities directly under the Central Government shall be in charge of the unified administration of standardization within their respective administrative areas. Competent administrative authorities under the governments of provinces, autonomous regions and municipalities directly under the Central Government shall, in line with their respective functions, be in charge of standardization in their respective departments and trades within their respective administrative areas.

45. The AQSIQ is also in charge of setting standards for consumer goods.

46. The MEP and the AQSIQ have different purposes when setting standards. The MEP, while setting environmental standards, has to consider the national and regional environmental protection targets, economic and technological feasibility, and other related factors. However, according to Article 1 of Standardization Law, environmental protection is not one of the stated purposes of this law or the AQSIQ, the implementation agency.

47. Soil and Water Conservation Law, art. 29 (1991); Implementation Rules on Soil and Water Conservation Law, art. 12 (1993).

48. Implementation Rules on Fishery Law, art. 27 (1987).

C. Environmental SMR Fails to Strengthen the Vertical Management Within the Environmental Protection Sector

One caveat about this environmental SMR was its failure to address the vertical relationship between higher level and lower level administrative entities within the environmental protection sector. The main problems are (1) ambiguous environmental management authority, (2) local protectionism, and (3) lack of effective supervision. Since the SMR was only focused on the national level while the vertical management system involves all administrative levels through the environmental protection sector, the reform was not able to address these questions.

1. Ambiguous Allocation of Environmental Management Authority Within the Vertical Framework of Environmental Protection Sector

The vertical framework of the environmental protection sector refers to the hierarchy of management relationships among central and local environmental protection sectors, especially the four levels of government—central, provincial, municipal and county/village. The Environmental Protection Bureaus (EPBs) at all levels, granted by the Environmental Protection Law, have almost the same environmental management authority within their respective jurisdictions, from general environmental planning to detailed implementation.⁴⁹ Consequently, every environmental affair is under the jurisdiction of a county/village EPB, a municipal EPB, and a provincial EPB, in addition to the MEP. EPBs on different levels of the same area have the same authority to manage environmental affairs but they might have distinct goals and strategies. This ambiguity of authority allocation leads to ignorance and conflict in environmental management.

For example, according to the Administrative Punishment Rules on Environmental Protection, EPBs above the county level are authorized to impose fines on companies within their jurisdiction for violation of environmental standards.⁵⁰ If a company is located in Haizhu District, Guangzhou City, Guangdong Province, then any of the Haizhu District EPB, Guangzhou Municipal EPB, or Guangdong Provincial EPB can impose fines for environmental violations. However, it is usually unclear which level EPB will actually implement this authority. In practice, whichever EPB finds out about the violation first usually imposes the fine on the company. But problems may still arise if two EPBs find out about the problem at approximately the same time or neither inspects the facility on the assumption that other EPBs have already investigated the company.

49. Environmental Protection Law, *supra* note 39, art. 7.

50. Rules on Administrative Punishment for Environmental Protection, arts. 9, 10, and 12 (1999), issued by SEPA.

2. Lack of Effective Control From Superior Environmental Protection Sector and Local Protectionism

The 1989 Environmental Protection Law establishes a dual affiliation relationship for China's environmental protection sector. On one hand, EPBs at each administrative level are accountable to the people's government of the same level; on the other, an inferior EPB is also under the instruction and supervision of the superior-level EPB. However, the local government of the same administrative level usually has the final say because it controls the environmental protection sector's budget and human resources. As a result, the superior environmental protection sector lacks effective control of local environmental protection sector. The result is referred to as local protectionism.

In 1994, China launched a separated tax system for central and local governments. Since then, local governments have been focused on developing the economy and increasing local tax revenue income, which are critical criteria in deciding the local officers' administrative performance.⁵¹ Therefore, some local officers are willing to ignore sustainability of local development and sacrifice environmental quality to pursue fast gross domestic product growth. This can also result in inappropriate influence of local environmental protection decisions because local officials have financial and administrative control over the EPBs, including the authority to appoint and transfer critical employees in EPBs.

As a result, officers at local EPBs are constantly facing dilemmas of enforcing the laws to maintain fair environmental quality and ignoring the violation to enable rapid economic boost.⁵² The Vice Minister of the MEP, PAN Yue, once told a reporter: "A director of EPB in a resourceful province was blamed by their provincial mayor for not being able to persuade SEPA to lower the environmental requirements, at the same time criticized by me for failure of enforcing them."⁵³ In some extreme situations, local EPB employees have had to write anonymous letters to the MEP to report environmental violations because they were afraid of being fired and punished by their local government leaders if identified as trying to enforce environmental laws which could be "barriers for economic development."⁵⁴

3. Lack of Sufficient Administrative Supervision and Responsibility Enforcement System

According to the Environmental Protection Law of 1989, local governments are responsible for the environmental quality within their jurisdiction.⁵⁵ However, it is unclear how much deterioration of environmental quality is necessary before a

51. State Council, *Decision on Separating Tax and Financial Management System (At Local and Central Levels)* (1994).

52. XIN Hongwei, *Vertical Management: Contribution and Limitation*, 14 NEW WEST CHINA 72 (2007).

53. HE JianRong, *Environmental Implementation Urges for Vertical Management*, LEGAL DAILY, Sept. 21, 2007.

54. *Id.*

55. See Environmental Protection Law, *supra* note 39, art.7.

local EPB has failed to fulfill its duty, what kind of responsibilities are imposed on local government, or which officer is directly responsible. Current laws and regulations answer none of these questions. It is also unclear which level monitoring and supervision department has the authority to impose punishment on the head or directly responsible persons of the government agency for violating such environmental requirements.⁵⁶ As a result, many environmental violations are ignored in practice.

In sum, environmental SMR is not the solution to everything because the upgrade of the department is more in the nature of a political declaration, yet it can improve the situation to a limited extent. We have to pursue further reform in daily environmental implementation to address the above problems in more fundamental ways in the future.

Moreover, SEPA's environmental storm, suspending dozens of major construction projects due to the lack of environmental impact assessment in 2005, the establishment of the five regional supervision centers in 2006,⁵⁷ and the environmental SMR in 2008, all share an important similarity: the central government's reliance on administrative approaches to solve environmental problems. However, the fact that environmental problems are also economic problems has been largely overlooked. If decisionmakers do not take local economic interest into account during their policy design, it is hard to improve fundamentally the local environmental practice regardless of the administrative ranking and the resources available to the environmental protection sector.

IV. The Future of China's Environmental SMR

If resolution of China's environmental protection dilemma is the main criterion for judging the success of environmental SMR, the upgrade of the MEP is only a beginning rather than an end point. We believe that to fundamentally improve environmental implementation and enforcement, in addition to elevating the administrative status of the environmental protection sector, three other important reforms should be pursued: (1) change from institutional reform to legislative reform by enacting administrative law and modifying environmental laws; (2) transfer from super ministry to coordinative ministry to establish the collaboration system among all government entities; and (3) introduce financial incentive-based approaches to current central-local relationships that are solely command-and-control based.

A. Change From Institutional Reform to Legislative Reform

Wang Canfa, one of China's foremost environmental law professors, believed that administrative reform is incapable of addressing conflicts in legislation, which house the biggest

problem in the environmental management system.⁵⁸ Thus, we believe that China should improve its general administrative organic laws, enact special environmental administrative organic laws, specify provisions in environmental legislation, and integrate legislative authority.

1. To Improve Administrative Organic Laws

Administrative organic laws are designed to allocate authority, regulate management, ensure accountability, and control institutional expansion.⁵⁹ Based on the analysis in the previous sections, we believe that China is in urgent need of building an integrated administrative and organizational law system to effectively control administrative power, to prevent inappropriate institutional growth, and most importantly, to improve coordination among different departments and avoid conflicting goals and actions.

Specialized administrative organic laws can focus on specific administrative areas. They must be established based on the fundamental structure, aiming at specifying legal status, duties and authority, composing format, internal structure, and human resources of particular administrative sector. They basically share the same goals with the general administrative organic laws to prevent abuse of administrative power, but can focus on a more specific area. Due to the comprehensiveness of environmental issues, overlapping duty and authority on environmental protection and ambiguous relationships between inferior and superior environmental protection sector, it is necessary to have a dedicated environmental administrative organic law.⁶⁰

2. To Specify Provisions in Environmental Legislation

For a long time, Chinese legislators believed that "something is better than nothing" and "general is better than specific." They also did not want to impose too many restrictions during the transition. Thus, legislation under this concept tended to be vague, granted too much flexibility, lacked feasibility, and potentially resulted in overlapping authority. For example, China's Solid Waste Pollution Prevention and Control Law Article 10 states:

58. Prof. WANG Canfa believed that three major areas needed further improvement: (1) immature legislative framework; (2) overlapping and conflicting provisions in different laws; and (3) improper allocation of legislative authority. See WANG Canfa, *On Limitation of Legislation on Environmental Administration Mechanism of China*, 4 TRIB. POL. SCI. & L. (J. CHINA UNIV. POL. SCI. & L.) 50-58 (2003).

59. YING Songnian & XUE Gangling, *Administrative and Organic Law and Implementation of Administrative Authority Legally*, 1 ADMIN. L. REV. 12-20 (1998).

60. We believe that environmental organic law should at least include these parts: (1) minimize conflicts on governmental functions and improve effectiveness and efficiency of environmental administration; (2) acknowledge and ensure the legal status of environmental protection sector; (3) identify major governmental departments in environmental protection and their relationship; (4) appropriately allocate and regulate duty and authority among all environmental-related departments; (5) set up standards of structures, functions, and resources allocations for EPBs; and (6) establish procedure for supervision, intersector cooperation, and conflict resolution.

56. Rules on Punishment Against Violation of Environmental Protection, art. 3 (2006), issued jointly by the Supervision Bureau and SEPA.

57. See PLANS FOR ESTABLISHING SEPA SUPERVISION CENTER, *supra* note 35.

[T]he competent environmental department under the State Council [referring to the MEP] is responsible for the united supervision and management of the nation's solid waste pollution prevention and control in general; other related departments under the State Council are responsible for the supervision and management of the nation's solid waste pollution prevention and control within their specialized areas.

However, this provision is too vague to actually identify responsible agents and define responsibilities. Who are the other related departments? What are the responsibilities of each department? What is united supervision and management, and what kind of authority does it have? How should the government enforce such a mandate if responsible departments ignore their duties? Without clear answers to these questions, any department can interpret the law in ways favorable to themselves, and thus cause controversies in implementation. Therefore, we believe that it is necessary to specify environmental provisions so that we can reduce potential conflicts due to necessary yet different interpretations by different authorities. In order to make the laws feasible and applicable, more detail should be included to specify the objects and subjects of authority as well as duty and liability.⁶¹

B. Transfer From Super Ministry to Collaborative Ministry

Environmental problems can be very complicated and usually involve energy, transportation, water resources, and land issues. Thus, it is infeasible and impractical to impose all of these responsibilities on the MEP. As public administration has become more complex and professional, division of work among administrative departments is necessary. In other words, interdepartmental collaboration is indispensable.

However, in practice, administrative departments usually have to agree on how to coordinate particular issues on a case-by-case basis. This kind of agreement sometimes ends up dividing administrative authority into smaller pieces and increasing the burden on both sides, due to lack of regulations in collaboration and a higher level entity to coordinate the cooperation.

One example is the 2001 Collaboration Instructions on Environmental Standard Management issued jointly by the MEP and the AQSIQ to address the problem of overlapping environmental standards. According to this Collaborative Instruction⁶²: (1) national environmental quality standards and national pollutant emission standards are drafted by the MEP, approved by the AQSIQ, set by the MEP, and then announced by both department jointly; (2) pollutant emission standards for mobile sources, such as vehicles, ships, and air planes, are drafted by the MEP, approved by the AQSIQ, and set by the MEP. The MEP is then responsible for investigating the technical standards and implementation timelines of pollutant emission, while the AQSIQ has to oversee other implementation details. Finally, both departments will

announce the standards together; (3) environmental standard of sample standards and environmental baseline standards are drafted and set by the MEP, while the AQSIQ will distribute, approve, arrange, and announce them. Standards for environmental monitoring are drafted and set by the MEP, while the AQSIQ will distribute, approve, and arrange them before the standards are announced by both departments jointly; and (4) industrial environmental protection standards are set by the MEP and documented by the AQSIQ. This is a repetitive and confusing standard-setting system and will result in inefficient collaboration.

The complexity of the objects of environmental management requires that interdepartmental collaboration is necessary to address these issues, and thus it is important to establish a collaboration system within the environmental protection sector. In other words, the environmental SMR is important, yet to establish an effective interdepartmental collaboration framework is of equal significance. Administrative collaboration, if conducted properly and effectively, can bring together and strengthen an administrative system, integrate diverse efforts, and improve administrative efficiency.⁶³

C. Introduce Financial Incentive-Based Approaches to Current Central-Local Relationships

Due to local protectionism, environmental enforcement has been a major obstacle in China. Local EPBs, because they have to rely on local governments for financial and human resources, cannot be completely independent and competent in environmental implementation.

Scholars who are in favor of vertical management believe that this is the fundamental way to prevent local protectionism. The approach can also integrate environmental protection authority and gather resources to focus on priorities, and thus can improve environmental implementation tremendously.⁶⁴

Unfortunately, even vertical management cannot avoid influences from the local government because EPBs must operate at the local level and work with local officers.⁶⁵ If the environmental protection sector at the local level were given exclusive authority unavailable to the local government, it might generate

63. TNAG Zuai, *Legal Analysis and Construction of Democracy on the System of Administration Corresponding in China*, 4 PHIL. & SOC. SCI. (WUHAN UNIV. J.) 525-28 (2007).

64. ZHANG Zitai, *Analysis on Dilemma of Environmental Litigation in China*, 5 LAW DISCUSSION 138-143 (2003); BAI Pingze, *Difficult Position and Solution for Construction of Legal System of China's Environment*, 1 SOC. SCI. J. C. SHANXI 51-53 (2002); LI Zhucui & CHEN Shaoping, *Present Situation of Environment Administration Law Enforcement in China and Counter Measures*, 1 J. SCI. & TECH. MGMT. LAND & RESOURCES 225-27 (2006).

65. It is not rare in China that entities under vertical management of a central department share common interests with local government and thus do not enforce law accordingly. One example occurred in October 2006. A village in Henan Province used agricultural lands to build a college, which was a violation of the county's land use policy. The local government conducted this violation; however, the Land Resource Department within the area, which is under the vertical management of Ministry of Land Resources, did not enforce the law and ignored the violation due to shared interests with the local government. See Xinhua News, *In-Depth Investigation: The Whole Story of Zhengzhou Longzihu College Illegally Occupied Agricultural Land*, http://news.xinhuanet.com/house/2006-09/30/content_5155934.htm (last visited Dec. 21, 2008).

61. See WANG, *supra* note 58.

62. NATIONAL QUALITY & TECHNOLOGICAL SUPERVISION BUREAU, SUGGESTIONS ON MANAGEMENT OF ENVIRONMENTAL STANDARDS (2001).

corruption problems within the system. Furthermore, vertical management is ultimately central management, which by no means is the solution for all central-local conflicts.⁶⁶

We believe the “carrot and stick” approach, which enhances governmental officers’ liability for their administrative responsibilities on one hand and provides leading financial incentives for good environmental performance on the other, is more effective and efficient in conducting central-local relationship for the environmental protection sector than the common-and-control model of vertical management. China’s current financial transfer system fails to provide incentive to favor good performance. It is incapable of stimulating the local government to improve its performance with set rates and stable quotas for subsidizing local environmental protection work regardless of performance.⁶⁷ So our suggestion is to conduct a reform of the financial transfer program and switch the fixed subsidy into conditional funds based on certain performance or criteria. The result would be to give the central government more influence to motivate the local governments.

V. Conclusion

Environmental SMR, or more accurately, SEPA’s upgrade to the MEP, would strengthen the governmental functions in environmental protection but is not the solution to everything. Although the MEP will have more weight and influence on the country’s social and economic affairs, the elevation cannot solve the horizontal authority allocation among different departments or the vertical conflicts within framework of environmental protection sector. To overcome these problems, the Chinese government should deepen the reform from the institutional level to the legislative level and enact administrative organization laws, especially an organization law for the environmental protection sector. Moreover, the Chinese government should move from a super ministry to a coordinative ministry system and facilitate greater collaboration among all government entities. Furthermore, the relationship between the central and local governments should change from a solely command-and-control system to a combination model with financial incentive-based approaches, which will motivate the local governments to protect the environment based on their own interests. These three transformations are the fundamental solutions to deep-seated contradictions and problems, which are urgent but not yet resolved by the SMR.

66. The opponents disagree based on four reasons. First, China is very large and the sheer area of the country imposes geological difficulties on direct vertical management. Second, due to disparate development levels in different areas, vertical management should not have the same goals nor can it achieve the same result in all regions, and therefore can be very inefficient. Third, vertical management cannot eliminate the influence of local government because environmental issues are related to many areas and interdepartmental coordination is indispensable. Last, a vertical management system is inconsistent with current environmental protection responsibility system. The Environmental Protection Law requires local governments to be responsible for environmental quality within their jurisdictions. But vertical management will take away environmental management authority from local governments and thus disable them from being responsible as the law requires. This is contradictory to the Environmental Protection Law. See DU Wanping, *Thinking on the Environmental Vertical Administration in China*, 3 CHINESE PUB. ADMIN. 99-102 (2006).

67. ZHANG Daoqing, *Legal Regulation of Financial Transfer Payment Between the Central and Local Governments*, 7 MODERN L. SCI. 56-68 (2007)