

## Chapter 3

### Environmental Pollution and Legal Controls During the Opening-up and Reform in China: From the Point of an Environmental Law Professor

Jin Wang<sup>†</sup>

#### 1. Environmental Problems before the Opening-up and Reform and the Control Model

Before the 1970s, there is not such concrete concept as “environmental protection.” From the 1950s, China has been practicing planned economy. With the development of national economy as the major focus, China gradually established the foundation of its industrialization at the end of that decade. Although environmental pollution problems caused by industrial production had appeared in some regions, they were considered as problems of occupational diseases, since agricultural economy is the major part in China’s national economy.

From the middle of the 1960s, the “Cultural Revolution Campaign” sponsored by Chairman Mao Ze-dong caused nationwide and long-range catastrophes. During that time, all activities of the country was carried out from top to bottom by the government in the form of administrative commands in accordance with the policies of the Center of Communist Party (CCP) and governmental plans. Except the Constitution, China passed no civil laws, economic laws or administrative laws. Rules related to environmental protection administration were promulgated by the State Council in the form of governmental orders. Since the compulsory regulations in those rules were not backed by legal liabilities or sanctions, implementation of those rules depended on the political and administrative pressures from the CCP and the government as well as the actor’s “revolutionary consciousness” and political enthusiasm toward the revolutionary career. With the political campaign going on, these rules existed only in name. Realizing this, the CCP and the State Council had to constantly restate these rules or incorporate the restatement into political campaigns.

---

<sup>†</sup> Associate Professor, School of Law, Beijing University

In the 1970s, owing to the development models of traditional industrial economy, world-shocking environmental pollution and public nuisance incidents were frequently reported in industrially developed countries. All these incidents, to some extent, alerted senior leaders of the CCP. Associating it with the need of political struggle, the news media compiled and distributed (with interior access only) some visual or literal issues about the status of environmental pollution and public nuisance in capitalist countries. Some insightful people in China were already conscious of the pollution problem; however, restricted by the political atmosphere of "just praise, no criticism" towards the regime and the closed-doorism policy, the citizens could not envisage the environmental problems in China.

In 1971, China set up a "Three Industrial Wastes Utilization and Management Office"<sup>1</sup> under the former State Infrastructure Committee, while the Ministry of Health organized an in-depth survey and monitor of pollution status of the major inland water systems and seas of China as well as the status of atmosphere pollution in cities, and accumulated first-hand information of the status of environmental pollution in China.

On June 5<sup>th</sup>, 1972, China sent a delegation headed by Premier Zhou En-lai to attend the United Nations Conference of Human Environment in Stockholm, Sweden. On reading the files issued at the conference, especially after reading *Only One Earth—The Care and Maintenance of a Small Planet* (unofficial document of the conference), the Chinese delegates came to realize the severity of environmental pollution problems in the world. At the same time, comparing China with other countries, the Chinese delegates realized that the environmental problems in China was quite serious, with the pollution of cities and rivers approximately at the same level as that in Western countries and damage to natural ecosystem much more serious than in Western countries.<sup>2</sup>

In August 1973, the State Council held the First National Environmental Protection Conference, and listed environmental protection on the agenda of state administration. This conference was very important in promoting environmental legislation in China in that it drafted *Several Rules on Protecting and Improving Environment* (for trial implementation) which was later promulgated by the State Council as the rudiment of Chinese environmental protection basic law. These rules were, in fact, a declaration of the government's policy towards environmental

---

<sup>1</sup> "Three Industrial Wastes" refers to waster gas, wastewater and waste residue.

<sup>2</sup> See also Qu Ge-ping, "Foreword". Barbara Ward & Rene Dubos, Translated and revised by Committee of Foreign Hazard series, *Only One Earth—The Care and Maintenance of a Small Planet*, Jilin People's Press, 1997, Pg3.

protection. Then and there, these rules acted as the nation's basic law of environmental protection. These rules stipulated for the first time 32-Chinese-characters guideline of "overall planning, rational arrangement, comprehensive utilization, converting disadvantage into advantage, relying on all citizens, everybody in, protecting the environment and benefiting the people", and made particular requirements on overall planning, rational industrial distribution, reconstruction of old cities', comprehensive utilization, converting disadvantage into advantage, protection of soil, plants, rivers, seas, forests and wildlife, environmental monitoring, environmental scientific research and education, and environmental protection investment and equipment.

In 1974, China set up the Environmental Protection Leading Group of the State Council, which symbolized birth of the environmental protection administrative agency at the national level in China.

From 1973 to 1978, China enacted a series of national environmental protection policies and frameworks of plan, while some environmental pollution prevention systems and measures grew mature in practice, for example "Three Simultaneity" system and Elimination Before Deadline system. Some administrative regulations and rules were passed by the State Council regulating prevention of seashore pollution and radioactivity safety. With Three Industrial Wastes Discharging Standard as the first, the state issued standards about wastes discharge, drinking water, food industry, etc., which recognized quantitative index for environmental protection.

## **2. Environmental Pollution Problems and Legal Controls During the Early Stage of Opening-up and Reform**

### **2.1 Revision of the Constitution in 1978, Adding Articles about Environmental Protection.**

The latter part of the 1970s saw the end of Chaos and restoration of order in China and also restoration of the Socialist legal system. During this time, besides revision of the Constitution, a series of basic laws were passed with the aim of stabilizing the country, for example, criminal law, criminal procedure law, etc.

In 1978, China revised its Constitution which stipulated in Article 11 that "the state protects and improves environment and natural resources, prevents pollutions and other public hazards." Thus, for the first time, environmental protection was written into the national fundamental law, which settled the constitutional basis for further legislation of environmental protection special laws.

On December 31st, 1978, the Central Committee of CCP ratified Main Points of Report on Environmental Protection Work (including advice to promulgate the Environmental Protection Law) drafted by the Environmental Protection Leading Group of the State Council, and issued directions on protecting the environment, eliminating pollution and protecting people's health through legislation.<sup>3</sup> This was the first time that the CCP issued directions on environmental protection in the name of its Central Committee. Environmental protection thus attracted attention of the Central Committee of the CCP, and this had positive impact on the promulgation of the Environmental Law in 1979 and the development of environmental protection work in the whole nation.

## 2.2 Environmental Legislation from Planned Economy to Planned Commodity Economy

### 2.2.1 Promulgation and Implementation of the Environmental Protection Law (for trial implementation)

Learning that most countries had adopted environmental legislation in protecting and improving the environment, the Chinese government decided to enact a special law on environmental protection based on the *Several Rules on Protecting and Improving Environment* (for trial implementation). This attracted much attention, since the status of legislation in China was quite unsatisfactory at that time. Draft of the Environmental Protection Law was completed in 1978. Supported by the Central Committee of the CCP, this law was soon passed "in principle" by the Standing Committee of the Eleventh National People's Congress (NPC) on September 13<sup>th</sup>, 1979, and was promulgated in the form of "for trial implementation."<sup>4</sup>

Promulgation and implementation of the Environmental Protection Law (for trial implementation) laid down a milestone for the construction of Chinese environmental legal system and symbolized that environmental protection in China had entered the

---

<sup>3</sup> In the Central Committee of CCP's December 31st, 1978 notice in reply to Main Points of Report on Environmental Protection Work by the Environmental Protection Leading Group of the State Council, it was stated that "we should enact laws to eliminate pollution and protect the environment."

<sup>4</sup> "Pass in principle" generally means that the Standing Committee of the NPC would not agree to all provisions of the law, but agrees to its principal ideas, and therefore passes the law. "Trial law" is generally passed by the Standing Committee of NPC when it feels that the draft is incomplete or time is not mature for the legislation while there are needs for the law. This was the common practice of the Standing Committee of the NPC and the State Council in passing laws and administrative regulations before the 1980s. Corresponding with this, there is also the concept of "for temporary implementation". See also *On Innovation of Law* by Yuan Jian-guo, Henan People's Press, 1989, Pg.

stage of rule by law. The law stipulated rules on the subjects, missions, guidelines and policies of environmental protection, basic principles and systems, requirements and measures in the protection of natural environment and prevention of pollution and other hazards, environmental protection agencies and their duty, scientific research and education, encouragement and punishment. Environmental protection administrative systems such as environmental impact assessment, "three-simultaneity" in infrastructure, pollutant discharging fee, elimination of pollution before the deadline were confirmed by the law as major systems. The law stated clearly that governments at different levels should incorporate environmental protection into national economy and social development plans, and governments from the State Council to local governments at different levels should set up special agencies in charge of the administration of environmental protection. These regulations had important impact on the harmonization of environment and development in the process of national economic development.

### **2.2.2 Comprehensive Legislation of Environmental Pollution Prevention Special Laws, Administrative Regulation and Rules**

In 1982, China revised the Constitution again which states in Article 26 that "the state protects and improves the living and natural environment, prevents pollution and other public hazards."

Compared with the 1978 constitution, the new constitution broadens the subjects of environmental protection (makes a distinction between living environment and natural environment), and adds some articles about rational exploration and utilization of natural resources. All these laid down the basis for latter comprehensive environment and natural resources protection legislation.

As for legislation on environmental pollution prevention, the state passed Marine Environment Protection Law in 1982, Water Pollution Prevention Law in 1984, and Atmosphere Pollution Prevention Law in 1987.

During this time, the State Council and the state environmental protection agencies passed countless environmental administrative regulations and rules. Besides the detailed rules about the implementation of the environmental laws, a large amount of administrative regulations and rules were passed governing pollutant discharging fee, environmental administration in project construction, prevention of marine pollution, prevention of pollution in ship-breaking, prevention of industrial pollution,

environmental administration in nuclear power plant operation, pollution accidents report and administration, tree-planting, pesticide administration, environmental monitoring and administration, administration of environmental protection standards, administration of enterprises run by villages, towns and communities, comprehensive utilization of natural resources, environmental administration in opening-up regions. The local governments also enacted and perfected its local environmental regulations and rules.

Since environmental standards are the impersonal and scientific basis for environmental pollution prevention administration and environmental administrative law-enforcement, during this period of time, China issued a set of national environmental standards, including quality standards, pollutant discharging standards, environmental protection basic standards and methodological standards governing air, water quality, noise, etc.

By now, the system of Chinese environmental law has come into shape.

### **3. Towards Market Economy—the Worsening Environmental Pollution Problems and the Environmental Legislation Campaign in China**

Judging from the appearance, legal systems and measures about pollution prevention in Chinese environmental law are not backward compared with those in developed countries. However, since China is a countries with long history of “rule by individuals”, and most enterprises are owned by the state, when the central and local governments come to discuss development policies, most industrial administrative agencies would emphasize economic development, and consider environmental protection as a factor for reference. Thus, in implementation, the environmental laws are weakened. Although the environmental laws expect a harmony between economic development and environmental protection, in fact, they are disjointed.

For example, the position of National Environmental Protection Administration in the administrative hierarchy is vice ministry, and in many national policy making occasions, head official of NEPA could only attend the economic decision-making conference as a nonvoting delegate. Impelled by economic interests, when economic interests contradict with environmental interests, the local head officials always tend to emphasize economic interests. As a result, although the environmental legislation is being perfected, environmental pollution problem is worsening (See Chart I) . The implementation of environmental laws is a headache to Chinese environmental protection agencies.

**Chart I :Gross Increase of Wastewater, Water Gas and Solid Wastes from 1981 to 1999 in China**

Year	Wastewater discharge (0.1 billion tons)	Waste Gas (1,000 billion M <sup>3</sup> (Standard) )	Solid Wastes (10 thousand tons)
1981	291	-	37664
1985	327	70653	46153
1991	336	84653	58759
1995	373	123380	64474
1998	395	486400	80000
1999	401	419150	78000

**Data in the Chart in based on the following materials:**

1. Collection of Environmental Statistics 1981—1985, NEPA, China Environmental Science Press, 1988.
2. Report On Environmental Status, published by SEPA, 1991 through 2000.

From 1989 on, the system of Chinese socialist economy experienced another great change, that is from socialist planned economy to planned commodity economy and further to socialist market economy. During this time, Chinese environmental laws had to be perfected and at the same time changed in order to meet the new requirements.

Besides, the United Nations held the Environment and Development Conference in Rio de Janeiro of Brazil in 1992, which passed the Agenda 21 and Rio Declaration on Environment and Development. And, Chinese government also signed the international environmental treaties on prevention of weather change and protection of biodiversity, which require the member countries to carry out the international environmental protection duties ruled in the treaties and revise and perfect their domestic environmental laws in accordance with the treaties.

### **3.1 Revision of the Environmental Law (for trial implementation) and the Development of Environmental Policies**

As early as 1983, with the basis of the Environmental Law (for trial implementation)—1978 Constitution—revised in 1982, added with defects of legal systems in the law, China arranged for its revision.

However, during the process of its five years revision, there was heated discussion between environmental protection agencies and resources management agencies, environmental protection agencies and economy administrative agencies, environmental protection agencies and other administrative agencies, environmental

protection agencies and enterprises about the scope of authority of environmental protection agencies, the regulatory scope of laws, system of environmental administration, whether to implement more scientific and rigid legal systems, etc.<sup>5</sup> The struggle ended naturally with a compromise between the parties and, legal systems successfully practiced in other countries, for example pollutant discharging permission, were sacrificed with the excuse of "unfit for the situation of China."

Besides, national economic administrative legislation was queuing for approval, and the First Draft of Revised Environmental Protection Law was not submitted to the 10th Session of the Standing Committee of the Seventh NPC for consideration until the end of 1989. On December 26<sup>th</sup>, 1989, the new Environmental Protection Law was passed. Compared with the former Environmental Protection Law (for trial implementation), the new Environmental Protection Law's regulations on environmental protection legal systems are more rational, such as regulations about local governments at all levels being responsible the environmental quality within its domain, environmental supervision management system, legal liabilities, administrative petition, environmental administrative procedure, etc.<sup>6</sup>

With the development of socialist market economy in China, the national economy has been growing at high speed in recent years. Owing to the above mentioned reasons, environmental problems especially environmental pollution can be summed as "straightening up in some regions, worsening on the whole, and the future being worrisome." In respond to this, the NPC established the Environmental Protection Committee in 1993 (latterly renamed as the Environment and Resources Protection Committee), in order to carry out overall planning and arrangement of future environmental legislation and law-enforcement by the legislative authority.

During this time, China also enacted the Ambient Noises Pollution Prevention Law (1989), the Wild Animals Protection Law (1989), the Water and Soil Preservation Law (1991), Detailed Rules on the Implementation of the Water Pollution Prevention Law (1989), Detailed Rules on the Implementation of the Atmosphere Pollution Prevention Law (1991), Decision of the State Council on Further Strengthening Environmental Protection (1990), Rules on Environmental Protection

---

<sup>5</sup> Struggles on rogation between environment and resources related governmental agencies is also described in Chinese political circle as struggle for "five authorities"(authority of examination and approval, authority to issue permissions, authority to collect fees, authority to impose penalties and authority to interpret laws).

<sup>6</sup> As for the revision of the Environmental Protection Law (for trial implementation), see also Lectures on Environmental Protection Law, edited by Zhang Kun-min and Jin Rui-lin, Tsinghua University Press, 1990; See also New Discussions on Environmental Protection Law, edited by Xiao Long-an and Hu Bao-lin, Chinese Environmental Science Press, 1990.

Administrative Sanction (1992), Temporary Regulations on Water Pollution Prevention of the Huaihe Basin(1995), etc. After attending the United Nations Environment and Development Convention in 1992, China passed Ten Measures on Environment and Development in China and published China's Agenda 21—China's White Book on Population, Environment and Development in 21<sup>st</sup> Century.

### **3.2 Enactment and Revision of Environmental Pollution Prevention Special Laws**

Since the practice of socialist market economy in China, the most significant environmental legislation has been the drafting of Solid Wastes Pollution Prevention Law from August 1995 to May 1996, and the revision of air and water pollution prevention laws.

Promulgation of the Solid Wastes Pollution Prevention Law (October, 1995) symbolizes that the Chinese pollution prevention legal system has been established. As for the content of the law, it departs from the past practice of little concrete regulations, and invests many provisions in comprehensive and systematic rules on prevention of solid wastes pollution. One thing worthy of mentioning is that it breaks the tradition of leaving concrete administrative sanction provisions to administrative regulations of the State Council, and directly stipulates in the law amounts of fines, and the highest fine may reach 1,000,000 RMB Yuan (Article 66) which is peerless in environmental legislations in the past. Promulgation of the Solid Wastes Pollution Prevention Law filled a gap in the environmental legislation, and moreover, it set up a referable legislative model for the enactment and revision of latter environmental laws.

Compared with the legislation of the Solid Wastes Pollution Prevention Law, revision of the air and water pollution prevention law carried out roughly at the same time were quite unsatisfactory, which will be discussed later.

### **3.3 Case study: Revision of Air Pollution Prevention Law (1995) and Re-revision of the Air Pollution Prevention Law (2000)**

The Air Pollution Prevention Law was enacted in 1987, and its promulgation roughly kept pace with the revision of the Environmental Protection Law (for trial implementation). Since the Central Committee of the CCP put forward the requirement of establishing socialist market economy in 1992, and rapid growth of economy had been coupled with the worsening air pollution, the newly set up Environmental Protection Committee of the NPC (latterly renamed as Environment

and Resources Protection Committee, ERPC) listed revision of the Air Pollution Prevention Law in its Ninth-five-year Environmental Legislation Plan as an important mission.

The ERPC organized a special group to revise this law, headed by director Qu Ge-ping. The group members went into thorough investigation and research at the early stage of legislation and did comparative studies of air pollution prevention laws in other countries. One thing worthy of mentioning is that the Chinese Environmental Newspaper set aside a column for all citizens of the nation to submit their opinions and advice on the revision of the Air Pollution Prevention Law, which might be the first attempt of public participation in the history of Chinese environmental legislation. The Version for Criticism was completed in the summer of 1994, and a Draft of Revision was formed on the basis of this version after consulted with the branches of the State Council and local governments.

The content revised or added in the draft includes stipulating the air pollutant discharging permission system, replacing pollutant over-discharging fee with pollutant discharging fee, redistributing the authority of setting deadline for pollution elimination from the government to the environmental protection agencies and, in order to avoid centralization of this authority stipulating decentralization measures to restrict this authority by the environmental pollution agencies, setting up the system of controlling city air quality at different levels and zones, setting up the system of sum total control of air pollutants, setting up measures to control coal pollution and acid rain and sulfur dioxide pollution (acid rain controlling area), setting up measures to control motor vehicles emission standards, setting up nitrogen oxides pollution control measures and setting up administration system of air pollution prevention.

Since the revised and added regulations in the draft were related to the interests of several administrative agencies who brought forth quite some criticism, the State Council held a coordinating conference in March 1995. The disputes focused on the administrative system of environmental pollution prevention and the feasibility of some new air pollution prevention measures.<sup>7</sup>

As for the administrative system of environmental pollution prevention, the opposite views focused on: firstly, the authority to set deadline for pollution elimination. Some people believed that it was better to leave this authority to the government as before, because this measure was closely related to the interests of enterprises, and it was necessary to have an overall consideration and coordination, or it would be a

---

<sup>7</sup> See also "Opinions on the Air Pollution Prevention Law (draft of revision)," collected by the Legal Affairs Office of the State Council, March 28<sup>th</sup>, 1995.

failure; Secondly, some people believed that it should be the government who enjoyed the authority to order the retirement of equipments that causes air pollution, because this authority was related to the operation of national economy and aftercare of workers, and allotting this authority to the environmental protection agencies was improper and difficult to be carried out; Thirdly, some people believed that the administrative system of air pollution by motor vehicles should be left as it was, or there would be problems of overlapping administration, overlapping charging and fines; Fourthly, the authority to monitor motor vehicles should be left as it was; Fifthly, some people believed that it was unnecessary for environmental protection agencies to take part in the annual inspection of air pollutants emission equipments; Sixthly, some people believed that it was unnecessary for environmental protection agencies to take part in issue of products pollution discharging standards; Seventhly, some people believed that it was unnecessary to lay down the levels of city environmental quality and the time to reach the standards.

As for the feasibility of some new air pollution prevention measures, they are generally labeled as unfit for the situation of the country, lacking of consideration for the status of economy and technology, the carrying capacity of the nation and the enterprises as well as the feasibility of laws. The problem includes coal washing and picking, prohibition on directly burning of raw coals, construction of treatment installations, and some people believed that technical feasibility and transitional measures should be considered. Regulations that discharging of epilogue by motor vehicles should meet the discharging standards was believed to have impact on the work and living of farmers and fishermen. As for air pollutant discharging permission, some people believed that the present measuring capability could not meet the demands, and that there was already the systems of environmental impact assessment, construction project checking and accepting, pollutants discharging report and sanctions, so that it was unnecessary to implement this system, or there would be too many levels which overlapped with each other and added to the burden of the enterprises. As for the burden of the costs of construction and operation of air pollution prevention projects, some people believed that it might lead to abuse of taxation and difficult to be implemented. As for the proposed additional tax to pollution-causing products, some people believed that it was not the time to set up such a tax and that this should not be stipulated in this law. As for the regulations about setting up the air pollution prevention fund, some people believed that it was in contradiction with the principle of "whoever causes the pollution should be responsible for its elimination." As for collecting discharging fee when meeting the standards, some people believed that it

was improper, because the case of air pollution was different from that of water pollution. In collecting water pollutant discharging fee, the income was used by the state to build sewage farms, while there was no such practice as building installations to treat the polluted air. More than this, at the present technical level, it was inevitable for domestic enterprises to discharge air pollutants within some limits, and collecting air pollutant discharging fee would add to the burden of the enterprises.

In August 1995, the Law Committee submitted a report of its conclusion on the draft to the 15<sup>th</sup> session of the Standing Committee of the Eighth NPC, and mentioned that "we should take the new situations and the new problems into account while revising the law, and tactically deal with the relationship between environmental protection and economic development."

On August 29<sup>th</sup>, 1995, the 15<sup>th</sup> session of the Standing Committee of the Eight NPC passed the Decision on Revision of the Air Pollution Prevention Law of the PRC, and gave birth to the new Air Pollution Prevention Law.

The new Air Pollution Prevention law made only 11 revisions to the old one.<sup>8</sup> To be objective, the new Air Pollution Prevention Law has made no substantial progress. It is the loss of sustainable development to the traditional development notions, which departed far from the original intention of revision (the necessity to revise the law and the guidelines in the revision). The revised law did not touch the key problems in air pollution prevention at all.<sup>9</sup> In one word, the revision was a failure.

Let's take a look at some statistics: In 1998, emission of sulfur dioxide in the country was 21,000,000 tons, soot 14,000,000 tons, industrial dirt 13,000,000 tons, with China among the countries that emitted the largest amount of air pollutants. With the rapid growing of vehicles, emission of hydrocarbons, carbon monoxide, nitrogen oxides in cities account for more and more shares of the total emission of air pollutants. In some super large cities, nitrogen oxides are the first criminals of air pollution. Added with the insufficient stipulations about legal liabilities in the law, misfeasance's were

---

<sup>8</sup> The major revisions are: new regulations requiring enterprises to practice clean production; elimination of backward techniques and equipments by the state; more strict measures to prevent air pollution caused by burning coal.

<sup>9</sup> According to an official who took part in consideration of the revision, one reason for the failure of the Air Pollution Prevention Law is that the NEPA in charge of the revision failed to coordinate with other administrative agencies. For example, the draft was used to be first submitted to the Legal Affairs Bureau of the State Council; however, the NEPA submitted its draft directly to the ERPC of the NPC. Lacking of coordination within the State Council, the draft offended some administrative agencies and, which led to strong oppositions from these agencies. Other people said that, the original Air Pollution Prevention Law was enacted by the vice director of the NPC when he was head of Legal Affairs Committee. Revision of the law would mean negation of his achievements, and some leaders of the legislative agencies would oppose this. The author came to this conclusion after discussion with officials in the government.

left unpunished. The daily worsening air pollution threatens the health of people and hinders the development of social economy. The citizens reacted strongly to this situation, and called for more rigid pollution prevention and elimination measures to be implemented.<sup>10</sup>

In 1998, as the air pollution in China was growing more and more severe, China had to revise the Air Pollution Law again.

The Standing Committee of the NPC passed the revised Air Pollution Prevention Law on April 29<sup>th</sup>, 2000. The main points of revision are: putting in efforts to prevent and eliminate air pollution in some major cities, strengthening the prevention of pollution caused by motor vehicles, strengthening the control of flying dirt in cities; prohibition of discharging pollutants above the discharging standards; carrying out air pollutants discharging sum total control and permission systems, establishing the discharging fee and over-discharging punishment systems, and enriching the provisions about administrative liabilities.

One thing worthy of mentioning is that this revision emphasized the analysis of expected results and economic costs in carrying out the legal systems. For example, to implement sum total control to control acid rain and sulfur dioxide pollution with the aim of keeping the emission of sulfur dioxide under 10,000,000 tons within the “two kinds of pollution controlling areas” by 2010, the total investment would be 180 billion RMB Yuan, with an annual input of 1.8 billion RMB Yuan. Considering 1995 GDP of the “two kinds of pollution controlling areas” which was 3,600 billion RMB Yuan, after calculation and analysis, the annual input would be 0.5% of the GDP, which is bearable. Another example is the control of pollution by motor vehicles, and the pilot study indicates that in order to keep pollution caused by motor vehicle below the newly issued emission standards, the cost of control would be 0.3—0.7% of the national GDP, while the development of car industry adopting advanced controlling technology would contribute 3% to the GDP.<sup>11</sup>

#### 4. Joining WTO and Perfection of Chinese Environmental Law System

At the end of the twentieth century, owing to changes in world political and economic patterns, coupled with achievements China had made after Opening-up and reform,

---

<sup>10</sup> See also “Explanation on the Revision Draft of the Air Pollution Law of the PRC”, by Qu Ge-ping, document of the 11<sup>th</sup> session of the Standing Committee of the Ninth NPC, August 24<sup>th</sup>, 1999. See also the result of assessment published in 1998 by the WHO on air pollution in 272 cities of 54 countries, and among the ten most seriously polluted cities, seven were in China.

<sup>11</sup> See also “Explanation on the Revision Draft of the Air Pollution Law of the PRC”, by Qu Ge-ping,

economic development and governmental system reform brought a sign of daylight to environmental protection in China. Under the market economy, the ownerships are diversified, non-public ownerships are growing, and many economically backward state-run enterprises were shut down or went bankrupt. Before this, the government feared that unemployment of former workers of state-run enterprises would lead to social chaos, but this situation has not occurred. When the citizens get used to news of unemployment (Chinese “xia gang”), they are used to living in competition. The financial storm in 1997 caused recession in domestic economy and, in order to stimulate domestic demands, the government puts its emphasis on the construction of infrastructures, and intends to lay down foundation for future economic development after several years of adjustment. This also gives chances to environmental protection in China.

At the end of 1999, China reached agreements with major Western countries on China's joining the WTO, which means that China will soon become a member of the WTO. In order to fit China's economic growth into the international common practice, and to carry out the sustainable development strategy, China adjusts its economic policies. This adjustment is beneficial to environmental protection as well as to improvement of enterprise management and product quality. However, Chinese environmental law is still bothered with malpractices that need to be reformed.

#### **4.1 Malpractices in the Active Chinese Environmental Pollution Prevention Administrative Systems and the Trends of Reform**

The Active Chinese Environmental Pollution Prevention Administrative Systems and their pattern of functioning were formed in the planned economy era. Although they are praised as typical of China, with the rapid economic development, changes in structure of ownerships and China's joining the WTO, these environmental legal systems could no longer meet the demands of the progress of industrialization and the development of environmental problems.

##### **4.1.1 Environmental Impact Assessment System and Its Reform**

From 1979 on, China has stipulated EIA in its environmental protection laws. However, this system in its implementation has deficiencies as limitation to objects of assessment and lack of public participation. It is applicable only to “construction

---

document of the 11<sup>th</sup> session of the Standing Committee of the Ninth NPC, August 24<sup>th</sup>, 1999.

projects” (infrastructure projects, technical alternation projects, and regional development projects that may have impact on the environment), excluding assessment of the process of making decisions whether to start the construction or assessment of fateful governmental decisions. The result is that the conclusion of EIA system is different according to different people—investors without governmental background have to go through the whole process as stipulated in the law, while construction projects carried out by the government or favored by chiefs of the government could evade the EIA procedure or the assessment would be carried out when it is too late. If this system were not amended, it would have negative influence on the image of China after it joins the WTO, and it is also in contradiction with the international principles.

Moreover, different from the EIA systems with public participation in other countries, the EIA system in China relies on the environmental protection agencies for examining and approving the conclusion of EIA. Chinese citizens have virtually no word in the process of EIA.<sup>12</sup>

#### **4.1.2 “Three Simultaneity” (simultaneously design, simultaneously construct and simultaneously put into production and operation) System and Its Reform**

Although Chinese government is still boosting that it is the environmental legal system innovated by China itself, I believe it is typical of environmental administration under the planned economy. In fact, in the “Three Simultaneity” system, the first “simultaneity” is enough as a compulsory requirement, and violation of the first “simultaneity” is violation of the law, and the second and third “simultaneity” are unnecessary. Judging from the history of “Three Simultaneity” system, it is portraiture of the planned economy age when the government had nothing to do with the heavily polluting state-run enterprises and had to retreat into the corners. This system should be reformed.

#### **4.1.3 Elimination Before Deadline System and Its Reform**

Elimination Before Deadline system in Chinese environmental pollution prevention law is a compulsory measure towards seriously polluting enterprises. It is stipulated in

---

<sup>12</sup> Although it is stipulated in item 4 of Article 13 in the Water Pollution Prevention law and item 3 of Article 13 in the Ambient Noises Pollution Prevention Law that “the environmental impact assessment report should include opinions of the residence and other entities at the construction site”, so far there is no particular provisions on how to implement it. Here, the citizens only have the right to express their opinions.

the active environmental pollution prevention laws that it is the government who has the authority to assign the deadline instead of the environmental protection agencies. The question is that, as it is clearly stipulated in the laws the objects (including seriously polluting units and units whose discharge of pollutants within specially protected areas exceeds the discharging standards) and conditions of EBD, why the environmental protection agencies could not assign deadlines to those meeting the requirements? Is the government entitled to pardon those seriously polluting enterprises?

To go to the root, EBD system is also product of the planned economy. At the time when this system was established, China was under planned economy, and enterprises were mainly run by the state, and ordering them to stop production meant economic loss to the state. However, the situation is much different today, and enterprise ownerships are diversified. Should their EBD be decided by the local governments?

#### **4.1.4 Reform of the Discharging Fee System**

This system has been revised in the Marine Environment Protection Law and the Air Pollution Prevention Law, and the former over-discharging fee is replaced by discharging fee and over-discharging violating the law. I believe this is the general trend of reform for Chinese environmental pollution prevention laws. Elsewhere, using the pollutant discharging standards as standards for collecting over-discharging fee can by no way ensure that the environmental quality standard will be met.

#### **4.2 Reform of the origin of Chinese Environmental Law : Substantiate Provision on the Protection of Citizens' Rights**

The tradition of environmental legislation in China is to strengthen the administrative authorities of the government, while citizens' rights are overlooked. Although it is stipulated in the aims of almost every environmental law that the state should protect people's health, these laws lack concrete measures on the protection of citizens' rights. Form the construction of projects to the occurrences of pollution damage, the principle of environmental pollution prevention laws should be to protect the people; however, the provisions of these laws provide no channel or procedure for environmental concerned citizens to participate in environmental management. And, even when the citizens' rights are abused, they can not resort to particular provisions for relief.

Firstly, in the construction of projects, not until Chinese citizens feel that something important is happening in their life can they learn indirectly what is happening. When they find that this change is threatening their quiet life, they cannot resort to any particular passage in the laws for beforehand, at time or afterward protection or relief.

Secondly, in the trial of pollution damage cases and most environmental infringement cases, the results are always astonishing. Not only the citizens' rights are abused, but that the polluters are encouraged by the verdicts to be more imprudent. Although the system of liability without fault in environmental pollution damage is stipulated in active environmental laws, owing to the legal virtues of Chinese judges, this theory exist only in textbooks.

One thing worthy of noticing is that regulations on protection and relief to citizens are too abstract. There are two reasons for this: one is that the legislators fail to understand the comprehensiveness of environmental laws, and they think that environmental law is virtually environmental administrative law; the other is that regulations in these laws bear no sign of "special law" with both the essential and procedural regulations took the form of "principle regulations."

Moreover, it is the common practice in China for legislation on administrative affairs to take the form of authorized legislation, that is, legislation on environment administrative affairs is authorized by the NPC to be drafted by the State Council who, in turn, authorizes its competent agencies to draft it. Thus, in the drafting of environmental laws, the authority of legislation falls into the hands of the environmental protection agencies. For example, in the 2000 revised Air Pollution Prevention Law, the legislators bragged that provisions on legal liabilities were strengthened; however, what they did was to add some provisions on administrative sanctions.

This kind of authorized legislation has its advantages; however, as for the environmental laws regulating complex and contradictive interests in the society, if they are drafted by the environmental protection administrative agencies, there will be some problems:

Firstly, this kind of environmental legislation will be centered on the interests of the environmental administrative agencies. The agencies would tend to strengthen its own authority of supervision while trying to evade or blur the interests of other entities in the legal relationships.

Secondly, under the present system of "technique bureaucracy", the environmental laws bearing technical colors are used by the officials with technical background as

instrument to strengthen their administration. However, since the implementation of environmental laws involves the interests of all parties, added with the peculiarity and difficulty in environmental administration, environmental administration dominated by environmental laws appears to be either dictatorial or inefficient. Dictatorship will lead to contradiction with other environment-related administrative authorities, and inefficiency decreases the authority of environmental protection agencies.<sup>13</sup>

If dictatorship is necessary in environmental administration, inefficiency should be avoided, since it will make the people lose confidence in protecting their rights with the help of environmental laws.<sup>14</sup>

Moreover, owing to the disjointment of legal systems with economic and technical measures in environmental protection, the law also disjoints with the policy in environmental pollution prevention administration. The essence is the abstractness of the law and the arbitrariness of environmental administration.

---

<sup>13</sup> Dictatorship in legislation is manifested when the administrative agencies expect to expand administrative authorities through legislation. In certain occasions, expansion of power of the law-drafting authority through legislation will be overlooked by other administrative authorities for certain reasons, and the law are easier to be passed. Officials of the drafting authority describe it as rushing through. Of course, in many occasions, they cannot manage to rush through. The Air Pollution Prevention Law of 1995 is an example. Inefficiency of legislation is manifested when the environmental law is inefficient in giving an answer to the interpretation of proper nouns in the laws, the significance of provisions on protecting the citizens, the significance of stipulating civil liabilities in environmental infringement and damage, and regulation on criminal liabilities for offenses of damaging the environment. The active environmental pollution prevention laws can best explain this.

<sup>14</sup> I believe that, inefficiency of environmental law is most obvious in the inefficiency of environmental administrative agencies in replying to citizens' environmental complains, inefficiency of providing protection and relief to citizens, offenses for violating the protection of environment and resources added to the Criminal Law in 1997 virtually made no progress. In recent years, it is made clear in the environmental legislations that administrative agencies' decision about environmental pollution compensation disputes between parties is a kind of intermediation, while it is formerly understood as a kind of verdict. The environmental administrative agencies are escaping from their duty. This is the most vivid description of their inefficiency.