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Environmental Tort Litigation in China

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The use of environmental tort claims to compensate pollution victims or to protect the environment and human health is still in an early stage of development in China. Nevertheless, tort cases play an outsized role in China's environmental law system. From 2004 to 2009, China's courts heard more environmental pollution-related tort cases than pollution-related administrative and criminal cases combined. Since 1998, the number of environmental lawsuits filed with the courts increased at an annual average of 25%.[1] This rise corresponded with a large rise in civil disputes and tort claims in general.[2] From 1981 to 2009, the number of civil lawsuits handled by courts rose by nearly 400%; the courts received over 8.8 million applications for civil and administrative lawsuits in 2009.[3] In recent years, roughly 100,000 applications were filed annually as environmental lawsuits with the people's court. On average, only 1-3% of all the environmental lawsuits filed will actually be adjudicated before people's court judges. From 2004 through 2008, there were over 10,700 environmental tort cases before the courts nationwide. In 2009, there were over one million tort actions decided, 1,783 of which were environmental torts.

These numbers suggest an increasing importance and a growing role for environmental tort law. However, the numbers do not provide a sense of the challenges that environmental tort plaintiffs and lawyers continue to face in China. Courts are not required to release opinions to the public, nor is there a centralized system for collecting and disseminating court decisions from around the nation. A search of one of China's primary legal databases shows only 79 environmental tort decisions available; a non-negligible portion concerned noise and light pollution. Another database only turned up 42 such cases for the period 2000 to 2007.[4] A Chinese nongovernmental organization (NGO), the Center for Legal Assistance to Pollution Victims (CLAPV), maintains its own database of cases that it has assisted with. Between 1999 and September 2009, CLAPV received over 12,000 complaints and requests for assistance; it offered direct assistance in 135 cases, of which 70 cases were officially closed by the courts.

I. The Cultural and Historical Context of Civil Litigation in China

It is generally accepted that corruption and local protectionism often unduly influence court decisions regarding civil cases in China.[5] But it would be an oversimplification to characterize such interventions as purely rogue. There are cultural, developmental, and systematic elements within China's legal system that facilitate political intervention by both local and national-level authorities. First, law in China primarily exists as a tool to facilitate the administration of the country and society and enable the ruler to achieve gov-

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1. Tun Lin et al., Green Benches: What Can the People's Republic of China Learn From Environment Courts of Other Countries?, Asian Development Bank 5 (2009).
2. In the Chinese legal system, administrative actions are classified separately from civil actions because they are brought before the people's courts under the Administrative Procedure Law of the People's Republic of China (PRC) and not the Civil Procedure Law of the PRC.
3. Supreme People's Court 2009 Annual Report to China's National People's Congress (Mar. 11, 2010).
4. Rachel Stern, *On the Frontlines: Making Decisions in Chinese Civil Environmental Lawsuits*, 32 Law & Pol'y 1, 79, 80 (Jan. 2010).
5. Randall Peerenboom, China's Long March Toward Rule of Law 281 (2002).

ernmental objectives more effectively, not to protect individual rights or impose limits on the power of the ruler.[6] Such a philosophy helps explain why courts often place an emphasis on social stability as the current overriding government objective, over individual "legal" rights.

Second, since ancient times, Chinese legal systems have strongly favored nonadversarial forms of dispute settlement, and the current court's position on promoting dispute resolution remains strong. While complete data is not available for all environmental tort cases nationwide, it is estimated that nearly one-half of all environmental tort cases are decided through court-managed mediation. From 2006 through 2010, courts in Jiangsu Province handled a total of 504 environmental tort cases, of those, 304 (61%) were resolved through mediation.[7]

Third, for all intents and purposes, China's present legal system only began to operate as a venue for adjudicating civil disputes around 1978.[8] At a meeting in 1978, the then-Supreme People's Court President, Jiang Hua, argued that civil cases should be treated as important as criminal trials. Jiang Hua then elaborated on why civil cases deserved more attention from the courts, and laid a jurisprudential foundation that would influence how Chinese judges approach civil cases up through the present day.[9]

> Civil cases concern the interests of the state, collectives, and individuals . . . and affect the harmony of the family, stability of society and the construction of the four modernizations[10] . . . when handling civil cases the people's courts must take the overall interest into account in making decisions and the decisions have to be not only lawful, but appropriate and reasonable.[11]

While a court's decision should be lawful, a reasonable decision "must" consider the "overall interests," presumably of the state and society. In recent practice, overall interests have been defined as protecting social stability. In practice, that has meant preserving the status quo, which generally supports immediate economic growth, and ensuring that there is no imminent threat of large-scale social conflicts. These factors, in addition to law and justice, continue to influence how judges decide cases in China.

This approach to civil jurisprudence goes well beyond common-law notions of balancing the equities, or weighing the social utility of how one uses land or property, as found in common-law nuisance cases. China's Supreme People's Court is very conscious of the need to adapt its approach to handling cases to the perceived challenges and broader political or economic climate. Sometimes such judicial responses are formal, other times they are not. A recent example involves a semiformal policy response by the courts to the international financial crisis.[12]

Clearly, the promotion of economic growth has driven state policy for several decades. It is evident that the courts' promotion of pro-growth policies could potentially be detrimental to plaintiffs who aim to force industries to internalize the costs of pollution. Additionally, those environmental tort cases that pit common individuals against larger economic actors make them susceptible to the courts' "duty" to preference economic growth and stability over legally recognized rights.[13] China's twelfth five-year plan, which covers the 2011 to 2016 time period, seeks to cool economic growth and provide more sustainable development. It remains unclear whether the plan's sustainable development rhetoric will influence how the legal system addresses environmental tort cases.

II. Chinese Statutory Law and Practice in Environmental Tort Cases

While the cultural, political, and historical influences on the Chinese legal system have created substantial challenges for plaintiffs bringing environmental tort actions, China's statutory law has designed certain doctrinal elements to favor plaintiffs.

The core principles of private enforcement of China's pollution control laws can be found in the civil liability principles of Article 124 of the General Principles of the Civil Law and Article 41 of the 1989 Environmental Protection Law.

Article 124 of the General Principles of the Civil Law of the People's Republic of China provides:

> Any person who pollutes the environment and causes damages to others in violation of state provisions for environmental protection and the prevention of pollution shall bear civil liability in accordance with the law.

Article 41 of the 1989 Environmental Protection Law states:

> A unit[14] that has caused an environmental pollution hazard shall have the obligation to eliminate it and make

6. Not only is this common amongst statist socialist regimes, but this notion can be traced back to the ancient Chinese philosophy of legalism, and its founder Han Feizi (280-213 B.C.). While legalism held that law should rule the country rather than an individual, its focus was on law as a utilitarian tool to assist the ruler, not as something to protect the rights of the governed or limit the ruler.
7. Yan Yan et al., China Environment News, June 21, 2011, http://www.cenews.com.cn/xwzx/fz/qt/201106/t20110620_703500.html.
8. Fu Hualing & Richard Cullen, From Mediatory to Adjudicated Justice: The Limits of Civil Justice Reform in China 11-12 (Oct. 2007), http://ssrn.com/abstract=1306800.
9. *Id.* at 12 (citing *Civil Adjudication Is Equally Important*, *in* Jiang Hua Zhuan, The Biography of Jiang Hua §5, ch. 16 (2007)).
10. The "four modernizations" refer to central plans to modernize agriculture, industry, national defense, and science and technology.
11. Hualing & Cullen, *supra* note 8, at 13.
12. In the Supreme People's Court's 2009 Annual Report to the 2010 National People's Congress, the international financial crisis was mentioned 13 times, and almost exclusively in the context of what the courts were doing to help address it. The report highlights that several provincial high courts have released policy statements specifically promoting economic development goals to their lower courts in response to the financial crisis.
13. Generally, the courts' ability to exercise this "duty" or permit other factors beyond law and fact to impact its decision can be reduced substantially in cases led or supported by the Procuratorate. The Supreme People's Procuratorate is a government body at the same level as the Supreme People's Court, but is generally considered more politically powerful.
14. Under the formerly centrally planned economy, virtually all organized entities, including business entities, were controlled by the state and designated

> compensation to the unit or individual that suffered direct losses. A dispute over the liability to make compensation or the amount of compensation may, at the request of the parties, be settled by the competent department of environmental protection administration or another department invested by law with power to conduct environmental supervision and management. If a party refuses to accept the decision on the settlement, it may bring a suit before a people's court. The party may also directly bring a suit before the people's court.
>
> If environmental pollution losses result solely from irresistible natural disasters which cannot be averted even after the prompt adoption of reasonable measures, the party concerned shall be exempted from liability.

However, many practitioners and scholars also argue that ambiguities of law and regulations continue to limit citizen rights and offer discretion to the courts to deny relief.[15] In addition to bringing tort claims against polluters directly for harms, pollution victims can at times use administrative litigation to challenge government actions that have contributed to or licensed pollution. In both tort case and administrative action, the most common form of redress is a payment for damages or fines. Because of difficulties ensuring compliance, it is rare for a court to require environmental remediation or behavioral change from a polluter.

Most recently, China's National People's Congress passed a new tort law (effective July 2010) that for the first time explicitly and formally addresses liability for environmental pollution.[16] Though consistent with the existing body of law, its inclusion of a specific chapter on environmental pollution liability (Chapter 8) and its codification of rules that have previously been controversial is expected to clarify ambiguities and benefit plaintiffs. Articles 65 and 66 of the Tort Law unambiguously state that the burden of proof in environmental tort actions is on the polluter.

Article 65 of the 2009 Tort Law:

> Where any harm is caused by environmental pollution, the polluter shall assume the tort liability.

Article 66 of the 2009 Tort Law:

> Where any dispute arises over an environmental pollution, the polluter shall assume the burden to prove that it should not be liable or its liability could be mitigated under certain circumstances as provided for by law or to prove that there is no causation between its conduct and the harm.

Previously, the shifting of the burden of proof from the victim plaintiff to the polluter-defendant was based primarily on a 2001 interpretive regulation of the Supreme People's Court, which specifically stated: "In compensation lawsuits concerning environmental pollution, the polluter carries the burden of proof with respect to . . . demonstrating the lack of causal link between the polluter's actions and the harmful result."[17]

It is still too early to know whether Articles 65 and 66 of the 2009 Tort Law will actually benefit plaintiffs. Plaintiff's lawyers often claim that judges do not apply Article 66 correctly. Judges claim that China's Civil Procedure Law sets a high bar for plaintiffs. Before accepting a case, most courts require substantial evidence from the plaintiff as to the harm, the source of harm, and even evidence of a causal link. However, even after an environmental tort case is accepted, the plaintiff will likely need to provide additional evidence linking the harm to the polluter, only then will the court shift the burden of proof to the defendant.[18]

A further new provision of the tort law is Article 68, which many scholars believe codifies existing law that polluters are subject to no-fault liability.[19]

Article 68 of the 2009 Tort Law:

> Where any harm is caused by environmental pollution for the fault of a third party, the victim may require compensation from either the polluter or the third party. After making compensation, the polluter shall be entitled to be reimbursed by the third party.

Though these principles have previously been raised in other relevant environmental laws, their former exclusion from the tort law provided ample room for polluters to craft legal arguments why such principles should not be applied to them, an argument many courts were willing to accept.

Under Chinese law, the applicable statute of limitation for environmental tort claims is three years "from the time that the party becomes aware of or should become aware of the pollution losses.[20] This is one year longer than the statute of limitations for other tort cases. Plaintiffs are also required to pay a case "acceptance fee" of .5% to 4% of the compensation requested of the court. The loser of a lawsuit ultimately becomes responsible for this fee. While plaintiffs may petition to reduce, waive, or postpone payment of the fee, the requirement creates a deterrent effect that makes it difficult for indigent plaintiffs to bring claims. Furthermore, some courts may rely significantly on such fees for their operational budget, hence creating disincentives for waivers. There can also be other fees.

> Plaintiffs often also face so-called "other litigation costs" that are levied at the court's discretion and which can be a source of abuse. If a losing defendant does not pay the amount ordered by the court, the plaintiff must pay a fee

as "work units." Legislation that preceded China's opening up in the late 1970s /early 1980s and transition to a market economy (which led to a proliferation of privately owned enterprises) still refers to such units as the responsible entities for purposes of the law. The 1989 Environmental Protection Law was originally enacted in 1979 on a trial basis and then continued in its effectiveness in 1989.

15. Benjamin Van Rooij, *People v. Pollution: Understanding Citizen Action Against Pollution in China*, 19 J. Contemp. China 63, 68 (2010).
16. Tort Liability Law of the People's Republic of China, Dec. 26, 2009, *available* at http://www.gov.cn/flfg/2009-12/26/content_1497435.htm.
17. Supreme People's Court Various Regulations Regarding Evidence for Civil Suits (promulgated by the Sup. People's Ct. Dec. 6, 2001, effective Apr. 1, 2002) (quoted in Alex Wang, *The Role of Law in Environmental Protection in China*, 8 Vt. J. Envtl. L. 196, 209 (2007)).
18. Interview With Chinese Environmental Court Judge, June 2011 (notes on file with author).
19. Tort Law of the People's Republic of China (2009).
20. 1989 Environmental Protection Law, art. 42.

> to institute execution proceedings. . . . Appraisal fees in pollution compensation cases can also be prohibitive. In pollution compensation cases, appraisals by a certified, court-appointed entity typically provide the key court evidence regarding damages and causation.[21]

Standing issues (locus standi) have arisen in the context of joint action lawsuits (very similar to class actions) and in public interest litigation (asserting a general community or society interest not specific to a particular individual). How each of these fits into China's legal system remains generally unresolved. Article 55 of China's Civil Procedure Law and Article 88 of the Water Pollution Law permit joint action suits. In practice, however, courts are granted a lot of discretion in deciding whether or not to permit joint actions. Because this discretion is provided even at the basic court level (the lowest level court in China's judiciary), it can amplify the effects of local protectionism.[22]

III. Environmental Tort Litigation in the Context of the Xinfang and Mediation Processes

Since the end of the Cultural Revolution in 1976, China has sought to rebuild its judiciary, especially by striving to increase the level of professionalism and qualifications of judges. Nevertheless, the traditional "Xinfang" system of petitioning higher level government officials to correct the perceived failings of their lower level counterparts has persisted as an important avenue for common citizens to seek relief when other options have failed. Literally translated, "Xinfang" means "letters and visits"—the process by which private citizens file petitions with Xinfang offices of various government agencies at successively higher levels of government to seek administrative intervention and redress for grievances against the government bureaucracy or other entities or persons.[23] At its core, one might analogize such efforts to a private citizen seeking the assistance of members of the U.S. Congress in addressing problems and grievances with particular federal agencies, for example. While Xinfang petitions generate responses from the government, only a small fraction leads to positive remedies for the petitioners. And while it is a time-honored practice, it has also remained controversial.

In pollution situations, a victim might directly petition the local environmental protection bureau (EPB) to investigate the pollution, to identify the source of pollution, the specific pollutant, and to provide relief. If the EPB finds the pollution to be harmful, the EPB may suggest that the relevant parties engage in mediation under the EPB's guidance. The authority of EPBs to facilitate mediation processes between victims and polluters to settle environmental tort claims, in fact, is statutorily set out in provisions in various environmental laws, including Article 41 of the 1989 Environmental Protection Law. If at the end of administrative mediation the victim is not satisfied with the outcome, or the polluter fails to perform under the mediation agreement, the victim can then file a tort claim against the polluter with the local court. It is not, however, a prerequisite that citizens inform the local EPB of an issue before filing suit.

Both petitioning and mediation processes continue to be used widely by the citizenry. In fact, their widespread use in response to pollution issues suggests a set of reasons for why environmental tort litigation and use of the courts as venues for remedies has not increased nearly as much as the growth in pollution and environmental problems would otherwise suggest. Distrust of the legal system, combined with the traditional roots of the petitioning system and a general preference of mediation over litigation as a tool for resolving disputes in China, has limited the rise of environmental tort cases.

IV. Major Challenges for More Effective Use of Environmental Tort Litigation

The future impacts of the 2009 Tort Law notwithstanding, there are several important obstacles facing plaintiffs suing to redress damages or enforce the law. First, among the most significant challenges remains the cost of filing cases and the difficulties of finding competent lawyers trained in environmental law able to provide assistance to pollution victims. Second, there are significant challenges to proving and quantifying damages; victims must frequently depend on "experts from law firms, NGOs, or local environmental or other authorities, including for instance agricultural or fishery bureaus."[24]

Third is the challenge of proving the defendant's polluting activities, as enterprises do their best to hide pollution. In one case studied, a company added a substance to the water that made it impossible to detect that the original pollution had created a hydrogen ion concentration (pH) level that exceeded the relevant water quality standards there. In another case, even a report by a local EPB attesting to the existence of indoor pollution was deemed insufficient evidence, because the court ruled that it lacked details about "the scope of the pollution."[25]

Fourth is the more general challenge of showing causation. While the 2001 Supreme People's Court's interpretive regulations already placed the burden of proof for causation on the defendant, thereby relieving the plaintiffs of that obstacle to proving their claim, some "local courts [continued to] rule against plaintiffs because [plaintiffs] were not able to provide evidence for the causal relationship between the polluting act and the damages incurred."[26]

21. Wang, *supra* note 17, at 212.
22. *Id.* at 192.
23. The Xinfang system has roots in ancient China's imperial governance structure, where the emperor might intervene to mete out justice or other imperial largess to a petitioner's grievances. For a general discussion, see Carl Minzner, *Xinfang: An Alternative to Formal Chinese Legal Institutions*, 42 Stan. J. Int'l L. 103 (2006).
24. *Supra* note 19, at 68-70.
25. *Id.*
26. *Id.*

The issue of evidence collection for both causation and damages is a major burden for plaintiffs, even though they do not technically shoulder the burden of proof. In general, Chinese courts give great deference to reports from official or certified entities that assess the environmental damage or the causal link between the pollution and the harm. This is a problem for several reasons. The costs associated with getting a scientific study can be very high. If the plaintiff disagrees with a report from a certified entity, it can be difficult to find another certified entity to provide an additional report, and courts regularly discredit or ignore reports from entities that do not have official certification. Some environmental advocates and scholars claim that because polluters generally have more money and influence than pollution victims, they are able to influence the outcome of certified reports. Because environmental cases often involve complex scientific issues, and because many judges are unfamiliar with how to synthesize scientific uncertainty with legal liability, judges very rarely stray from the outcomes contained in a certified report. A certified report on causation or damages is often unassailable evidence that will determine the court's decision.

Finally, local protectionism remains an important impediment to just resolution of environmental tort claims. As described elsewhere, it means that local government agencies favor industries or look the other way when pollution causes harm, simply because polluters frequently provide significant economic benefits to local jurisdictions. Because such cases oftentimes pit poor and less-vocal plaintiffs against large enterprises or government agencies, the susceptibility of courts to such influence from local government officials remains a serious challenge.

V. China's Environmental Courts: If You Build It, Will They Come?

The recent emergence of environmental courts (e-courts) or e-tribunals in China is a pragmatic response to the fact that there is inadequate enforcement from government agencies and that most courts were unwilling or unable to justly adjudicate public enforcement actions. Since 2007, over 40 e-courts and e-tribunals have been established in China at the intermediate and lower levels in the provinces, primarily to enhance the judicial enforcement of pollution laws. In fact, some of these courts have granted standing for plaintiffs, organizations, and government agencies to sue on behalf of the public interest. The Kunming City Court even developed a special fund to help cover the costs of litigation for plaintiffs suing in the public interest. However, the vast majority of cases brought to the e-courts have been routine administrative and criminal actions, though the number of such cases has risen in the e-courts since their establishment.[27]

At the end of 2010, there had been 15 public interest suits decided in the e-courts, and all but five were brought by local procuratorates. Of the cases not brought by government prosecutors, one was brought by the Kunming City EPB as a public interest case, in part, to force compliance with orders and fines that the bureau previously issued. One was brought by a local city government, and another by a local government bureau. Two cases were brought by an official state-sponsored NGO under the Ministry of Environmental Protection (MEP), the All China Environment Federation (ACEF). In all of these public interest actions, plaintiffs generally prevailed.[28] Scholars in China point to these cases as examples of the good that can come from promoting more public enforcement and expanding public interest standing. Although there have only been a few cases filed with courts, none of China's courts have accepted a case brought by a true NGO as plaintiff in the name of the public interest. Some scholars are concerned that the current trend will limit public interest litigation standing to government entities or organizations with strong government support.

Because a major justification for these courts is to increase public enforcement, their survival is questionable, if more public actions and public interest cases are not brought. Some scholars question the legal validity of the e-courts' provisions granting standing to organizations suing in the public interest, as Article 108 of China's Civil Procedure Law requires that plaintiffs have a direct interest in the case. But to date, the Supreme People's Court has allowed the e-courts to experiment with their expanded standing provisions. How much longer will the courts persist if public enforcement and public interest cases do not increase? And will the Supreme People's Court or other legislation legitimize the e-courts and their standing provisions in the near future? For the time being, the e-courts are an exciting pragmatic experiment that speaks more to China's environmental enforcement challenges than to the power of public enforcement.

VI. The Center for Legal Assistance to Pollution Victims (at the China University of Political Science and Law)

The CLAPV is one of the most successful environmental NGOs in China and has received significant international media attention. It is also the only environmental law NGO that is independent of the government. Founded by Prof. Wang Canfa in 1999, it has represented pollution victims from all over China and recovered significant pollution compensation for its clients.

27. Gao Jie, Environmental Public Interest Litigation and the Vitality of Environmental Courts: The Development and Future of Environmental Courts in China 16 (2010).

28. Lin Yanmei, Environmental Judicial Bulletin (Huanjing Sifa Tongxun) Second Edition DRAFT, 2011, at 21, *available at* http://chinaenvironmentalgovernance.com/2011/07/12/china-environmental-law-newsletter-and-curriculum-development-for-judges/.

CLAPV Cases 1999-2009[29]

CLAPV Cases	Air Pollution	Water Pollution	Noise Pollution	Other	Total
Won	12	13	4	3	32
Lost	8	5	3	10	26
Judicial Mediation	1	2	1	0	4
Admin. Mediation	2	3	2	1	8
No decision or unfinished	26	23	5	11	65
Total	49	46	15	25	**135**

APPENDIX:

CLAPV cases, as described by Professor and lawyer Wang Canfa:

(1) Improving the Environment Through Litigation: 97 Families in Shiliang River Reservoir of Jiangsu Province v. Factories in Limnu County of Shandong Province for Pollution Damages[30]

The Plaintiffs were 97 families in Shilianghe River Reservoir who had bred fish in net cages since July 1997. From July 1999 through June 2000, large fish kills occurred within the reservoir on three separate occasions. The confirmed cause of these incidents was found to be Linmu County Paper Mill of the Shandong Province and Linmu Chemical Plant of Shandong Province. Together, the plants discharged a sizeable amount of sewage into the reservoir, suffocating the fish in large numbers. The Plaintiffs brought action in the Intermediate People's Court of Lianyungang City of Jiangsu Province, requesting an injunction for the two parties, damages in the amount of RMB [Renminbi] 5,652,000 Yuan (US$ 730,185), and attorneys fees. The court found in favor of the Plaintiffs and required the Defendants to bear joint liability. The Defendants appealed to the High People's Court of Jiangsu Province on April 16, 2002. After a hearing, the court affirmed the judgment of the intermediate court. More than a year since the judgment became effective, however, Defendants had yet to compensate the families. The CLAPV and its lawyers became involved and were able to secure RMB 5,600,000 Yuan (US$ 723,467) in payment. The most important effects of this litigation are that the defendants dare not discharge sewage into the reservoir again, and fish are once again abundant.

(2) Local Government Action Protecting Polluters and Hindering Enforcement of Environmental Laws: Li Jianguo and Four Victims in Laoting County of Hebei Province Are Accused of Disrupting the Social Order by Assembling in a Crowd and Blackmail[31]

Li Jianguo and four other victims were peasants living on the bank of the Tingliu River, Laoting County of Hebei Province. In February 2000, Lefeng Steel Plant, which lies to the east of Li Jianguo's village, began to manufacture steel. According to the related laws and regulations, the steel plant was a severe polluter and should have been closed. It had not completed either an environmental protection examination or approval procedures during its construction, and there were no active environmental protective measures in place. The factory seriously polluted the local environment. In May 2000, crops and vegetation around the plant began to wither and die. The village leader, Zhao Wentu, and several other victims reported the incidents to the local authorities and the county environmental protection agency, but nothing was done. Because of this inaction, 100 villagers blocked the door to the plant, stopping steel production and the noxious emissions. The villagers elected six people as representatives, including Li Jianguo. These representatives petitioned the government to close the plant in accordance with pertinent environmental laws and regulations. Meanwhile, the crowd was disbanded by the police, and the representatives were arrested and released on bail pending a trial.

In October 2000, Li Jianguo and other villagers sought legal assistance from the CLAPV, and in December 2000, they sued the government of Laoting County. They requested that the court require the government to fulfill its duties in accordance with the law and to order the plant closed. During the litigation, the plant offered to compensate the victims if they would withdraw their suit. In January 2001, Li Jianguo and other victims accepted the compensation of RMB 300,000 Yuan (US$ 38,757) and withdrew their claims.

On February 6, 2003, however, the six representatives were again detained for the crimes of racketeering and inciting a mob; unfortunately because of a severe acute respiratory syndrome (SARS) outbreak, the CLAPV could not offer legal assistance.[32] On May 7, 2003, the People's Court of Laoting County held that the six village representatives had committed the crimes of inciting a mob and racketeering and sentenced them to a maximum of four years imprisonment. Li Jianguo and the others appealed the decision, and the Intermediate People's Court of Tangshan City sent the case back for a retrial. The CLAPV offered legal assistance, and the trial was to be covered by numerous newspapers and media outlets, but nothing was reported by the media. On March 25, 2004, the People's Court of Laoting County found that the defendants com-

29. CLAPV 10th Anniversary materials (on file with author).
30. Wang Canfa, *Chinese Environmental Law Enforcement: Current Deficiencies and Suggested Reforms*, 8 Vt. J. Envtl. L. 159, 179 (2007), *available at* http://www.vjel.org/journal/pdf/VJEL10058.pdf.
31. *Id.* at 181.
32. In the spring and summer of 2003, many government offices were closed and travel was restricted to contain the spread of SARS in China.

mitted the above crimes and sentenced the individuals to one to four years in prison.

The Defendants appealed once again. The CLAPV consulted numerous criminal and environmental law experts, who determined that the defendants had not violated existing Chinese law. The last decision from the Intermediate People's Court of Tangshan City canceled the racketeering crime, but the mob incitement was upheld.