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# Introduction: Snapshots of the State of China's Environmental Regulatory System

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## INTRODUCTION: SNAPSHOTS OF THE STATE OF CHINA'S ENVIRONMENTAL REGULATORY SYSTEM

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*Tseming Yang\**

The seriousness of China's environmental challenges has been apparent for some time. Its population size and torrid economic growth have already made it the world's largest greenhouse gas emitter, surpassing the United States many years ahead of previous estimates.<sup>1</sup> Yet, only in recent years has the serious impact of pollution and environmental degradation on China itself become visible to the rest of the world. Nowadays, China is oftentimes pointed to as the nation with the world's worst urban air pollution problems, including the highest levels of sulfur dioxide emissions,<sup>2</sup> severe water pollution issues,<sup>3</sup> and serious problems of agricultural soil contamination.<sup>4</sup>

One of the most recent and serious pollution accidents occurred in November 2006. An industrial accident at a PetroChina plant in China's northern city of Jilin released 100 tons of benzene compounds and related chemicals into the Songhua River, which contaminated the water supply for millions of people.<sup>5</sup> The subsequent several day loss of municipal water to the downstream city Harbin caused panic among the four million residents and a temporary mass exodus.<sup>6</sup> The incident also led to diplomatic strains with the Russian government some weeks later when the toxic spill poured into the Amur River, the Songhua River's extension into Russia.<sup>7</sup>

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1. Emma Graham-Harrison & Gerard Wynn, *China Seen Topping U.S. Greenhouse Gas Emissions in 2007*, REUTERS, Mar. 27, 2007, available at <http://uk.reuters.com/article/scienceNews/idUKL2272661220070323>.

2. WORLD BANK, *CLEAR WATER, BLUE SKIES* 9 (1997).

3. MA JUN, *CHINA'S WATER CRISIS* (2004) (Nancy Yang Liu & Lawrence R. Sullivan trans., 2004).

4. Sun Xiaohua, *Soil Survey to Monitor Pollution*, CHINA DAILY, Apr. 9, 2007, available at [http://www.chinadaily.com.cn/china/2007-04/09/content\\_845807.htm](http://www.chinadaily.com.cn/china/2007-04/09/content_845807.htm).

5. Philip P. Pan, *Chinese Officials Sought to Hide Toxic Spill*, WASH. POST, Nov. 26, 2005, at A14.

6. David Lague, *Water Crisis Shows China's Pollution Risks*, N.Y. TIMES, Nov. 23, 2005, at A4.

7. Wang Xiangwei, *Mainland's Environmental Chief Sacked Over Toxic Chemical Spill*, S. CHINA MORNING POST, Dec. 3, 2005, at 1.

China's preference of economic development over environmental protection has traditionally been justified by the larger societal needs for social development and poverty alleviation. Unfortunately, the consequences of economic development have not all been positive. Pollution and land seizures by local government to enable economic development efforts have been blamed for an increasing number of mass protests and upheavals.<sup>8</sup> In some instances, such conflicts have turned violent and resulted in equally severe government crack-downs.<sup>9</sup>

The Chinese government has taken notice of many of these issues, enacting over two dozen major environmental laws and promulgating many more subsidiary regulations. Many of these new laws are transplants of American and European models of environmental regulation, which incorporate modern public health and safety standards and regulatory methodologies. China's environmental condition, however, raises the inevitable question: Will such efforts be enough? Is the future of China's environment the image of gloom and doom presented by some Western media reports? Or, is China ready to leapfrog its way to environmental sustainability and prosperity, skipping many decades of environmental conflicts and regulatory evolution? Given its importance to the global environment, the answers are important for not only China, but also the rest of the world.

The *Vermont Journal of Environmental Law's* March 2007 Symposium titled, "China in Transition: Environmental Challenges in the Far East," brought together some of the leading experts on China's environmental and energy regulatory system to address these questions. This issue of the *Journal* contains both the transcript of the Symposium presentations as well as the formal written contributions by some of the conference participants. The views and descriptions presented in person and in these articles are insightful and enlightening, reflecting at once sober assessment and hopeful expectation. As a whole, they provide an unprecedented set of insights into the most pressing contemporary issues of environmental law and policy in China. The articles provide a detailed inquiry into the issues raised at the Symposium.

The article of Professor Wang Canfa, one of China's most prominent environmental lawyers and arguably the best-known in the foreign press, provides an overview of the state of environmental law and litigation from

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8. Vivian Wu, *200 Angry Villagers Loot Leather Plants*, S. CHINA MORNING POST, Apr. 12, 2006, at 7.

9. Minnie Chan, *Dongzhou Woes Simmered for a Year Before Riot Villagers Say Complaints Over Lack of Compensation for Land Grabs Were Ignored*, S. CHINA MORNING POST, Dec. 17, 2005, at 9.

the frontlines. In addition to giving an overview of the breadth and scope of China's environmental legislation, his piece provides a diagnosis of the problems of enforcement and implementation. Probably the most interesting among his findings is the apparently low rate of actual prosecution of environmental crimes over a five year time period following enactment in 1997. Prosecution was sought in less than 5% of cases, even when considering only the total number of reported "grave accidents." According to Professor Wang, the typical punishment meted out instead of criminal penalties is usually administrative. The article also suggests legal reforms that would improve regulatory implementation and enforcement. While the challenges of reforming the system are evident, there is also optimism to be found in the cases brought by his Center for Legal Assistance to Pollution Victims.

Alex Wang's piece considers more specifically the role of law in China's current environmental regulatory system. Drawing on parallels in the evolution of environmental regulatory systems in the United States and other industrialized nations, he notes some recent developments in China's environmental laws. The primary focus of his article is on the use of environmental tort claims and litigation to vindicate pollution harms. His piece provides an uncommonly detailed examination of critical legal principles and a fascinating account of environmental litigation in a high-profile pollution tort case in Fujian province with an evaluation of the outcomes. The article concludes with a review of currently discussed proposals to facilitate and possibly regulate public interest litigation.

Professor Wang Mingyuan's article examines issues related to the contemporary implementation of China's energy laws. In his piece, he traces the historical backgrounds of both the 1997 Energy Conservation Law and the 2005 Renewable Energy Law. His critique of the two schemes focuses on the deficiencies in their regulatory design, including insufficient effort to operationalize legislative goals and to account for the operation of markets. Many of the problems identified, such as lack of implementation resources and insufficient enforcement authority, ultimately reflect the pervasive weakness of governmental regulatory structures that are designed to accomplish important central government policies. His discussion is instructive in illustrating that the regulatory deficiencies hampering the implementation of China's pollution control statutes is not unique to that context.

Patti Goldman's article focuses in detail on the lessons that the evolution of environmental litigation in the United States holds for two issues of importance to China's burgeoning public interest environmental lawyers: standing and environmental impact assessments. Her piece

recounts the meandering path of standing doctrine in the United States and the policy considerations in the design of broad versus narrow standing criteria. These issues will gain greater visibility and significance as more environmental lawsuits are brought in China. She also considers some of the extensive history of environmental impact assessment litigation in the United States as it bears on a newly revitalized environmental impact assessment process in China.

The article by Jesse Moorman and Zhang Ge on China's 2003 Environmental Impact Assessment Law and the implementation of the public participation provisions delves into an issue of much current interest to the Chinese environmental community. Environmental impact assessments were already required under Chinese law preceding the 2003 EIA law. However, the 2003 legislation greatly expanded the involvement of the public in the environmental impact assessment process. In addition to explaining the benefits of extensive public participation in such processes, their article provides a comparative analysis with respect to the American experience under the National Environmental Policy Act. For those unfamiliar with the EIA law in China, Moorman and Zhang also provide a detailed explanation of the recently promulgated public participation implementation guidelines by China's State Environmental Protection Administration. They also set out recommendations for improving the process through greater public access to information, enhanced public participation in decision-making, and increased access to justice. Of course, even though the 2003 law and the 2006 SEPA guidelines are promising, assessment of their implementation and effectiveness will have to be left to future commentary.

Finally, Professor Li Zhiping's article on the protection of peasant farmers' environmental rights in the countryside provides an empirical counterpoint to the doctrinal and regulatory discussions of China's environmental laws. Her survey of inhabitants in Guangdong's rural countryside is unprecedented in providing a contemporary perspective on the awareness of peasants about environmental rights and laws. Most of the attention of government regulation and research has focused on the environmental problems in the urban areas. Yet, the majority of China's population and a rapidly increasing portion of China's environmental problems are rural. Her article provides evidence of not only the deterioration of the environmental quality in rural areas, as measured by inhabitants' perceptions, but also the increasing awareness and concern with such pollution issues. Her piece also explains the limited capabilities of rural residents in obtaining recourse for environmental harms, the nature of the limitations, and potential solutions. Professor Li's analysis sheds

light on an important but under-researched area of Chinese environmental law.

Together with the Symposium transcripts, the articles provide an important snapshot of some of the most pressing issues in China's environmental regulatory system. For American scholars and lawyers interested in environmental law in China, they also provide much needed analysis of contemporary legal and policy issues. Though the future of China's environment remains to be seen, there is no question that its path will be profoundly affected by the regulatory and legal issues identified by the authors here.

