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China's new environmental protection law: A game changer?



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On April 24 of 2014, the Standing Committee of the National People's Congress (NPC) of China passed the revised Environmental Protection Law (EPL) (NPC, 2014). The law approval marks the end of a 3-year highly controversial and unique revision process. The long-winded drafting process has been unprecedented in China's law making history for at least three reasons: (1) although legislative procedures usually stipulate a maximum of three reviews (by the NPC Standing Committee), the EPL needed an extraordinary fourth review; (2) various drafts were publicly released and opened the door for critical discussion and commenting in the public sphere by NGOs and scientists; (3) state authorities disagreed openly on various EPL drafts, bringing internal power politics of the Chinese state in the open (Wübbeke, 2014; Zhang et al., 2013).

Now that the battle on the EPL is settled, and following our earlier analyses on the controversies and power politics during the EPL revision process (Zhang et al., 2013) and on proposals for EPL revision (He et al., 2013), this commentary highlights the major achievements of the new law

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regarding seven major controversies (see [Supplementary Table 1](#), the relevant articles are addressed in bold italics).

(1) *Abandonment of the “limited revision” principle*: The EPL revision process started by following a so-called “limited revision” principle, focusing only on the most feasible minor amendments as a comprise of conflicts among state actors involved. However, after the release of the first and the second drafts to the public, this principle encountered strategic protests by Ministry of Environmental Protection (MEP), environmental law experts, several media outlets and NGOs. In response to this pressure, it was decided to shift to a major revision in the legislation plan. Compared to the EPL 1989, the number of chapters in the new EPL has increased from six to seven and the number of articles from 47 to 70; indeed a major revision has taken place!

(2) *Reaffirm environmental protection as basic national policy; strengthen environmental policy principles*: Article 4 affirms for the first time that environmental protection is a basic national policy and the law also notes that economic development must be coordinated with environmental protection, instead of the other way around as was the case in the 1989 EPL (Article 1). A new article (Article 5) was added to lay down the principles for environmental protection: prevention as priority, policy integration, public participation, and responsibilities put at those actors causing environmental, ecological and health damage. In various articles the responsibility and supervision power of state environmental authorities are strengthened. However, the precautionary principle and environmental justice are not addressed in the new 2014 EPL.

(3) *Strengthen strategic environmental assessment (SEA)*: Although SEA, on policies in particular, has been strongly promoted by MEP and environmental experts in the past decade, SEA is only encouraged, not enforced, according to the new EPL. This has to be considered as a “missed chance” for SEA. Article 14 encourages ministries and provincial level governments to consider environmental impacts when economic and technology development policies are developed. Article 19 stresses that environmental impact assessment (EIA) should be conducted on planning and construction projects. At the same time, EIA at project level is strengthened and specified. Article 56 requires that full EIA reports (instead of only a summary, as used to be practice) must be made available to the public and these reports must include a chapter on how the public participated in the EIA process. Article 63 stipulates that construction projects without EIA approval must be stopped (instead of allowing re-submission of an EIA report). Articles 65 hold the environmental impact assessment agencies (those governmental agencies in charge of assessing and accepting EIA reports) responsible for fake EIA reports.

(4) *Strengthen and institutionalize public participation and information disclosure*: Public participation and environmental information disclosure were not touched upon in the 1989 EPL. Given their increasing importance in effective environmental governance, a full new Chapter 5 in the EPL is devoted to public participation and information disclosure. Governmental agencies at county level and above that are responsible for or involved in environmental protection must publicize information and data on environmental quality, management and supervision. Industrial polluters have to publish details of pollution discharge and construction and operation of environmental facilities. Evaluations of the environmental performances of both local environmental agencies (and their responsible officials) and industries should be published. Violations of environmental regulations as well as environmental performances will be recorded in the credit archive of organizations/individuals – a system-in-the-making that lists all achievements and performances of individuals/organizations, to be used for promotions and demotions – and the names of individuals/organizations violating environmental regulations will be made public. The rights on environmental public interest litigation – a new and most contested issue during the law drafting – has been extended from only the government-backed All-China Environmental Federation in the second draft, via national level organizations in the third draft, to any environmental NGO that is registered with the municipal civil affairs authorities and that has not breached any law or regulation over the past 5 years (which raises the number to several hundreds of NGOs) (Article 58). Individual citizens, however, are not allowed to initiate public interest lawsuits, capping the number of environmental lawsuits and local authorities being sued.

(5) *Strengthen implementation through new instruments*: The 1989 EPL only focused on conventional environmental regulatory approaches. In addition to improving existing market-based instruments,

new market-based instruments to improve environmental performance of industries have been given a further legal basis in the new EPL, including ecological compensation system (Article 31), environmental taxes (Article 43), environmental liability insurance (Article 52) and green credit (Article 54).

(6) *Holding local governments and officials accountable*: Economic priorities of local governments have been widely seen as the Achilles heel of environmental protection in China. The new EPL gives local governments larger environmental responsibilities and the possibility to have more stringent policies than the national one. But at the same time they are formally assessed and held accountable on their environmental performance (Article 26). The 2014 EPL also specifies that local officials failing their enforcement duties may face demotion, dismissal and criminal prosecution. Responsible officials will have to resign in cases like illegal licensing, ignoring illegal pollution activities, fabricating monitoring data, and refusal to disclose environmental information (Article 42, 68). This is also meant to strengthen the reliability and credibility of environmental data.

(7) *Improve law enforcement*: Low (risks on) sanction on violation of the law and in compliance to regulations has long been blamed for poor environmental law and policy implementation in China. The 2014 EPL deviates from caps on fines and only one-time penalties, and introduces a more severe daily penalty system as long as environmental violation continues and with no maximum (Article 59); this is widely seen as a game changer. Moreover, the local environmental agencies have the power to shut down operations violating environmental laws. Not only private and public organizations but also individuals are held responsible – and are punished – for violations. This makes the 2014 EPL consistent with the current Civil Servant Law, the Administrative License Law, the Administrative Penalty Law, the Tort Liability Law and the Criminal Law (Article 64, 69).

The 2014 EPL is believed to be the most stringent environmental law China ever had. Its adoption is especially remarkable as at the moment in many countries economic priorities put environmental policies and laws under pressure. In the coming years two environmental frontiers have to be watched with respect to this 2014 EPL: (1) the implementation (and thus interpretation and operationalization) of the EPL; (2) the harmonization of this EPL with other existing – and less stringent – environmental laws.

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Appendix A. Supplementary material

An extensive Table compares all articles of the 1989 Chinese Environmental Protection Law 1989 with comparable articles in all revisions.

Supplementary data associated with this article can be found in the online version at <http://dx.doi.org/10.1016/j.envdev.2014.10.001>.

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