



Environment

in 30 jurisdictions worldwide

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China

Sarah Stokoe and Stéphane Gasne

Gide Loyrette Nouel AARPI

Legislation

1 Main environmental regulations

What are the main statutes and regulations relating to the environment?

China boasts a wide range of reasonably sophisticated environmental laws and regulations, and the main environment-related statutes that may be quoted from the outset are as follows:

- Environmental Protection Law (1989) (the EPL);
- Law on the Prevention and Control of Water Pollution (1984), amended in 1996 and 2008;
- Law on Air Pollution Prevention and Control (1987), amended in 1995 and 2000;
- Law on Solid Waste Pollution Prevention and Control (1995), amended in 2004;
- Environmental Noise Prevention and Control Law (1996);
- Radioactive Pollution Prevention and Control Law (2003); and
- Law on Environmental Impact Assessment (2002) (the EIA Law).

2 Integrated pollution prevention and control

Is there a system of integrated control of pollution?

Chinese environmental pollution monitoring agencies (the Ministry of Environment and its local bureaus) focus on emissions in separate media rather than taking a holistic approach to the polluter's behaviour for the duration of its industrial operation. There is no equivalent to the integrated pollution prevention and control EU directive in Chinese law. A major exception, however, occurs at the time of the environmental impact assessment, where a general forecast of an industrial activity's likely impact on the environment is required. This must take place prior to the approval of any industrial project.

3 Soil pollution

What are the main contents of the rules applicable to soil pollution?

The only texts that specifically refer to soil and groundwater contamination are the applicable environmental quality standards for soils and the Circular on Earnestly Accomplishing Environmental Pollution Prevention Work in the Enterprise Relocation Process (2004), which provides that before a plant handling or generating hazardous wastes is shut down, it should submit site soil and groundwater contamination reports to the relevant local government authorities, and develop a remediation programme based on the findings in the reports. This rule also applies where the land-use activity at the site of such type of facility is to be changed.

Contamination of land subjects the operator to liabilities under the EPL, General Principles of Civil Law and Criminal Law provisions. According to the General Principles of Civil Law, liability is vested with the person who caused the damage, so that a subsequent

owner (or occupier) of contaminated land may seek compensation from the previous owner who caused the contamination or knowingly permitted the presence of contaminants. Nevertheless, given that no specific rules expressly govern the contamination of land and that the burden of proof is often complex in such cases, allocation of responsibility for land contamination is usually dealt with on a purely contractual basis.

4 Definition of waste

How is waste defined?

Waste is a generic notion that is not defined in comprehensive terms in PRC laws. Instead, 'waste' is often referred to as a product or substance which falls within certain categories listed in sector-specific state standards. In the National Catalogue of Hazardous Waste (1998), 'hazardous waste', for instance, is referred to with regard to the list of substances which are reactive, toxic, corrosive, etc. 'Solid waste' is defined in the Law on the Prevention and Control of Environmental Pollution caused by Solid Waste promulgated in 2005 (the Solid Waste Law), and includes 'electronic waste', further defined in the Administrative Measures for the Prevention and Control of Environmental Pollution by Electronic Waste (2007).

Specific categories of waste (including hazardous waste, radioactive waste, electronic waste, scrapped automobiles, packaging, etc) are subject to the duties and controls provided in the relevant laws and regulations.

5 Regulation of waste

What types of waste are regulated and how?

The Solid Waste Law clearly provides that companies that collect, store, transport, use or dispose of solid wastes are required to prevent leakage and scattering, and generally avoid non-containment. This duty of care is particularly acute in the construction phase of facilities which discharge solid waste. The design, construction and commissioning of such facilities must be synchronised with that of the appropriate pollution storage and treatment facilities, failing which, the main plant's start of operations will not be authorised. This requirement is known as the 'three synchronisations' system (3S), and was first introduced in China's central EPL of 1989 and was specifically reinstated in the Solid Waste Law. Although 3S was to play an important role in stimulating investment in pollution abatement facilities at new factories, it is not strictly enforced in practice. Alternate solutions may be sought, and plants which discharge solid or hazardous waste may entrust storage, treatment and disposal of such waste to licensed companies.

The actual disposal of waste always requires a licence. There are specific authorisations for incineration, secure landfill, physico-chemical process treatment (mainly for oily sludge), and for waste

collection, recycling and recovery. Licences are issued in consideration of disposal technology and equipment, qualified manpower, etc, with no obligation to post financial guarantees or bonds to ensure that funds are available for the proper clean up works following site closure, for instance.

6 Regulation of air emissions

What are the main features of the rules governing air emissions?

All plants or facilities that directly or indirectly discharge hazardous or controlled substances are subject to the Discharge Permit System (DPS). Under this system, all discharging entities must declare and register any emission of pollutants with the local Environmental Protection Bureau (EPB) shortly after the facility acceptance and the start of any operation. The registration form includes quantity and regularity of emissions, as well as their concentration – and such information is to be regularly updated. The competent EPB then issues a permit with precise indications of discharge limits of pollutants (with reference to both volume and concentration) in an enterprise's wastewater or solid discharge and air emissions. Discharge fees vary according to the type of pollutant, although rebates are possible where reductions have been verified and are in practice sometimes postponed.

7 Climate change

Are there any specific provisions made for climate change?

Greenhouse gas (GHG) emission reductions in China can take the form of emission reduction credits (CERs) certified under the Kyoto Protocol Clean Development Mechanism (CDM). The CDM arrangement allows industrialised and economy-in-transition parties to the Kyoto Protocol, referred to as annex I parties, to acquire CERs originating from GHG emission reduction projects based in non-annex I parties (including China) to comply with their emission-reduction commitments.

The Measures for Operation and Management of Clean Development Mechanism Projects (2005) are the legal framework for implementation of the Kyoto Protocol in China, setting out the procedure to be followed for the approval of a CDM project at the national level and for the allocation of revenues from the sale of CERs between the Chinese government and the project sponsor. If the CDM Executive Board confirms the final verification report on GHG emission reduction obtained from the local Designated Operational Entity and subsequently issues CERs, it is specified that between two per cent (emissions reduction projects listed in the encouraged category) to 65 per cent (HFC and PFC emissions reductions projects) of the proceeds of sale of such CERs shall be remitted by the project owner to the Chinese government.

To date, while numerous CDM projects have obtained approval from the National Development and Reform Commission, which is the Chinese Designated National Authority, CERs have been issued by the CDM Executive Board for only a limited number of projects. Such CERs are mainly to be traded under the EU Emissions Trading Scheme.

In addition, China launched its first environmental exchange trading platform in August 2008, which will initially focus on promoting the exchange of technologies for environmental protection, energy conservation and pollution emission reduction, but is aimed at eventually serving as a platform for trading internationally recognised carbon credits.

8 Protection of fresh water and seawater

How are fresh water and seawater, and their associated land, protected?

According to the Chinese Constitution, all bodies of water are owned by the state. There are many laws and regulations protecting both fresh water and seawater and their associated lands; for example, the Law on the Prevention and Control of Water Pollution, promulgated in 1984 and amended in 2008 (for additional information, please refer to the updates and trends section) and the Law on Marine Environment Protection, promulgated in 1999 and amended in 2000. Law-makers in China are paying more and more attention to the importance of the protection of bodies of water against various kinds of pollution. Under applicable laws and regulations, the limits to discharge are formulated by competent national and local authorities and one must obtain a pollutant discharge permit before he can discharge any pollutant into bodies of water.

9 Protection of natural spaces

What are the main features of the rules protecting natural spaces?

Natural spaces protected by law include land, mineral resources, forests, grassland, etc. For land or marine areas, which represent typical ecological systems, a nature reserve may be established, to which special protection measures will apply. The land resources and forestry and agriculture ministries are in charge of the protection of the abovementioned natural spaces.

Land, mineral resources, forests and grassland belong to the state, which follows a policy of reasonable and sustainable exploitation of natural resources. Generally, administrative approval or licence and fees are required for the use, development and exploitation of these natural spaces. Some specific types of natural spaces are subject to more stringent protection and control. Examples of these natural spaces include farmland, specific kinds of mines, grassland and forestry resources in special regions.

10 Protection of flora and fauna species

What are the main features of the rules protecting flora and fauna species?

Flora and fauna species are protected through a series of laws and regulations. Those species protected by law include wild animals and plants which are rare, endangered, or of important economic or scientific value. The ministry of forestry is in charge of the protection of wild terrestrial animals, wild plants within forested areas, and rare plants outside forested areas. The fishery administrative department is in charge of the protection of wild aquatic animals.

Wild animals and plants are divided into three classes: national first class protection, national second class protection, and local key protection. Those among the national first class enjoy the highest level of protection. Protection is carried out through the administration of hunting and collection, artificial cultivation and breeding, control of the purchase and sale of protected species, protection of the living environment of wild animals and plants (including establishment of nature reserves where key protected wild animals or plants, or both, are located).

11 Noise, odours and vibrations

What are the main features of the rules governing noises, odours and vibrations?

The Ministry of Environmental Protection has formulated national standards which set limits on the emission of noise, vibrations and odours. Local governments are entitled to set stricter emission limits within their administrative region or to set their own standards where there is no national standard. County-level environment administrative departments may determine sound environment

quality standards applicable to different areas within their administrative regions. The environmental protection administrative departments established at the county level and above have the authority to implement laws on the prevention and control of noise, vibrations and atmosphere pollution with the assistance of other government organs, such as the public security bureau.

Environmental pollution is controlled from the beginning of a new project. For any new projects, an environmental impact assessment report must be approved before obtaining project construction approval from relevant government authorities. In addition, pollution-emitting entities must file details of noise, odour and vibration pollution emissions, measures taken to control the emissions, and technical data to prevent pollution with the competent local environment administrative authorities. For any emissions in excess of the national or local limit, an over-standard pollution charge is payable; the pollution emitting entity also has the obligation to reduce emissions.

12 Liability for damage to the environment

Is there a general regime on liability for environmental damage?

According to the General Principles of Civil Law, liability is vested with the person who caused the damage, so that a subsequent owner (or occupier) of contaminated land may seek compensation from the previous owner who caused the contamination or knowingly permitted the presence of substance that caused the contamination. Nevertheless, where the land was acquired from a previous user, given that no specific rules expressly govern the contamination of land and that the burden of proof is often complex in such cases, allocation of responsibility for land contamination is usually dealt with between the seller and the purchaser on a purely contractual basis. This usually translates into a series of representations and warranties given by the seller, tied in with an indemnification mechanism in case of breach. However, sellers frequently seek to expressly exclude liability for any pollution whatsoever (whether land contamination or otherwise) and to require the purchaser to rely on his own investigations.

13 Environmental taxes

Is there any type of environmental tax?

Currently, there is no environmental tax as a single type of tax in China. However, the idea of using tax as a method to prevent environmental pollution and to protect resources can be found in other types of taxes. Typical examples of such tax are mainly consumption tax and resource tax. Consumption tax is imposed on consumer goods, such as cars, one-use wooden chopsticks and wooden floor boards, which may cause pollution or consume non-renewable resources. Resource tax is mainly applicable to the exploration of mineral products. Crude oil, natural gas, coal, non-metallic mineral ore, ferrous metallic mineral ore, and non-ferrous metallic mineral ore are all taxable products for resource tax purposes. Environmental administrative fees are also applicable on polluted water treatment, sulphur dioxide emission, etc.

In addition to the imposition of these taxes and fees, tax incentives are also provided for environmental protection and water or energy saving projects. Such projects include public wastewater treatment, public refuse treatment, comprehensive exploitation and utilisation of biogas, upgrades of energy-saving or pollution discharge-reduction technologies, seawater desalination projects, etc. Income derived from these projects is entitled to a three-year tax holiday followed by a three-year half tax rate reduction from the year when the first operational revenue is generated.

Hazardous activities and substances

14 Regulation of hazardous activities

Are there specific rules governing hazardous activities?

As a rule, the disposal of hazardous substances always requires a specific licence. Radioactive waste, for instance, is subject to specific authorisation granted directly by SEPA, and an operating licence issued by the EPB (at county level or above) is necessary for the collection, storage and disposal of solid hazardous waste. As a general principle under Chinese law, discharge permits are location-specific and are granted intuitu personae, that is, not transferable.

15 Regulation of hazardous products and substances

What are the main features of the rules governing hazardous products and substances?

'Hazardous waste' is referred to with regard to the list of reactive, toxic, corrosive or otherwise hazardous substances listed in the National Catalogue of Hazardous Waste (1998). Hazardous products and substances are subject to the duties and control provided in the relevant laws and regulations, depending on their intended use or means of disposal.

Industrial accidents

16 Industrial accidents

What are the measures to prevent industrial accidents?

According to the Industrial Safety Law, production companies shall observe the relevant laws and regulations to ensure safety in production. The Chinese government shall set relevant national standards. Once an accident occurs, the persons in charge of the entity shall take immediate measures to prevent the impact from expanding and shall report it to the relevant government organs.

The environmental impact assessment required by the EIA Law covers the measures for preventing or mitigating unfavourable impacts.

The Law on the Prevention and Control of Water Pollution stipulates that enterprises and public institutions at risk for potential water pollution accidents shall create an emergency plan for dealing with such accidents, make sufficient preparations for emergencies, and rehearse such plans on a regular basis. Where any accident occurs that causes or may cause water pollution, the enterprise or public institution shall initiate its emergency plan immediately, enact emergency measures and report the accident to the environment protection authorities.

Environmental aspects in transactions

17 Environmental aspects in M&A transactions

What are the main environmental aspects to consider in M&A transactions?

There is no statutory requirement that a seller must expressly disclose environmental issues in the context of a merger or takeover transaction. Instead, environmental issues are dealt with in contractual terms and representations and warranties, which may include environmental matters, are usually required from the shareholders of the target company. Agreements on the allocation of environmental liabilities relating to, for instance, contaminated land, are valid and enforceable and usually translate into a series of representations and warranties given by the seller, tied in with an indemnification mechanism in case of breach.

18 Environmental aspects in other transactions

What are the main environmental aspects to consider in other transactions?

Environmental protection has recently become an integral part of many transactions. Under applicable PRC laws and regulations, a 'green credit policy' has been adopted in order to slow down the growth of the high-energy-consuming and heavy pollution industries. In 2007, the State Environmental Protection Administration (now the Ministry of Environmental Protection), People's Bank of China and China Banking Regulatory Commission jointly issued the Opinions on Implementing Environmental Protection Policies and Rules and Preventing Credit Risks, stipulating that the enterprises' compliance with applicable environmental laws would be considered as an important factor when banks deliver loans.

In June, 2003, the State Environmental Protection Administration issued the Notice on the Inspection and Verification of Environmental Protection of Companies Applying for Listing and Listed Companies Applying for Refinancing (the Notice). According to the Notice, when heavily polluting companies apply for listing or refinancing, they shall be subject to inspections by the competent environmental protection bureaus. The Notice applies to companies in the following industries: metallurgy, chemical, petrochemical, coal, thermal power, building material, paper-making, brewing, pharmaceutical, fermenting, spinning and weaving, tanning and mining.

Finally, according to the EIA Law, appraisals shall be conducted on the environmental impact of any project including construction of facilities in China. The environmental impact assessment consists in analysing, predicting and appraising the environmental impact of construction projects that might occur during or after completion, in order to propose countermeasures for preventing or mitigating any unfavourable impact, and to arrange a follow-up monitoring.

Environmental impact assessment**19 Activities subject to environmental impact assessment**

Which types of activities are subject to environmental assessment?

Any construction projects, whether they are greenfield or renovation or expansion projects.

20 Scope of environmental impact assessments

Do environmental assessments act as a licence? Do they only cover industrial projects, or other non-industrial projects and programmes and plans as well?

No. Environmental assessments do not act as a licence per se. Having obtained approval of an environmental impact assessment report by the competent environmental protection bureau, a company should still apply for a licence to discharge pollutants.

21 Environmental assessment process

What are the main steps of the environmental assessment process?

Pursuant to the EIA Law, the content of an environmental impact assessment report depends on the degree of estimated future environmental impact. It may therefore take the form of a full report, a statement or a registration form. Once it is prepared by a qualified agency, the report is submitted for approval by the competent environmental protection authority. This might be the provincial environmental protection bureau or the Ministry of Environmental Protection itself, depending on the amount of investment. Construction works can start when the environmental impact assessment report is approved.

Regulatory authorities**22 Regulatory authorities**

Which authorities are responsible for the environment and what is the scope of each regulator's authority?

The actual implementation of environmental policies at the national level is vested in the Ministry of Environmental Protection (formerly the State Environmental Protection Administration or SEPA) and local environmental protection bureaus or EPBs. They are in charge of monitoring industrial pollution discharge, site inspections, issuing discharge fees or fines and prosecution, inter alia.

23 Investigation

What are the typical steps in an investigation?

Environmental regulators benefit from very broad information-gathering powers, and may require the production of documents (including technology and trade secret materials, to the extent necessary for compliance verifications), demand samples and interview employees.

24 Powers of regulatory authorities

What powers of investigation do the regulatory authorities have?

The level of compliance by enterprises with pollution standards and permits is checked by EPB inspectors who carry out regular inspections and occasional surprise site visits without a warrant.

25 Administrative decisions

What is the procedure for making administrative decisions?

Transparency in the decision-making process for administrative authorities is a recently emerging topic. SEPA adopted the Trial Measures on the Disclosure of Environmental-related Information in 2007, which have been in effect since 1 May 2008. These measures provide, inter alia, that public authorities are required to disseminate information on administrative procedures (in levying fees and granting permits, for instance). The Interim Measures of Hearing for Administrative Licensing on Environmental Protection Cases (2004) also provide for the right to be heard although they do not grant a specific right to challenge the regulator during the decision-making process.

26 Sanctions and remedies

What are the sanctions and remedies that may be imposed by the regulator for violations?

Chinese environmental regulators enforce regulations through administrative sanctions and through their powers of prosecution. SEPA and the local EPB may issue warnings, injunctions, fines (with escalation of fees in case of a persisting breach), and confiscate illegal gains. In serious cases, they may suspend or shut down plant operations and revoke the permit or licence.

27 Appeal of regulators' decisions

To what extent may decisions of the regulator be appealed, and to whom? What are the grounds and procedures for appeals?

If an applicant is denied a discharge permit, he or she may file a claim before the administrative division of the People's District Court within three months of the EPB's refusal. Once the EPB has issued a written notice to the applicant clearly stating what discharge thresholds apply for the issuance of a permit, the unsuccessful applicant may file for reconsideration within seven days. The EPB then has 10

Update and trends

The most recent developments in Chinese environmental law are focused on strengthening the framework of water pollution prevention and control. In February 2008, the NPC revised the core statute on water pollution, the Water Pollution Prevention and Control Law. Under the new provisions, pollution fines are no longer subject to a cap and offenders are now liable to settle up to 30 per cent of the direct economic loss caused by water contamination. In addition, water pollution victims are expressly granted

the right to file class actions, and environmental compliance in this area is now a criterion in the evaluation of local governments.

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days to issue a final notice. If such second notice is still not positive, the applicant may file a claim before the locally competent tribunal within 15 days of the second notice.

Judicial proceedings**28 Judicial proceedings**

Are environmental law proceedings in court civil, criminal or both?

Under applicable PRC laws and regulations, environmental law proceedings can be carried out in civil, criminal or administrative courts. An action under applicable environmental laws and regulations may result in civil liabilities, criminal liabilities or administrative penalties imposed by competent authorities.

29 Powers of courts

What are the powers of courts in relation to infringements and breaches of environmental law?

Under applicable PRC laws and regulations, courts have the right to determine whether a company's behaviour is an infringement or breach of environmental law and to impose payment of compensation or criminal liability. The generally applicable civil and criminal procedure principles shall be followed.

30 Civil claims

Are civil (contractual and non-contractual) claims allowed regarding breaches and infringements of environmental law?

Yes. According to the General Principles of Civil Law, any polluter causing damages to others shall bear civil liability.

31 Defences and indemnities

What defences or indemnities are available?

The EPL sets forth a liability-without-fault system in case of environmental pollution. Accordingly, a polluter shall have the obligation to compensate even though he was not at fault. Nevertheless, force majeure, fault of the victim and any third-party fault are available defences to claim release from or mitigation of liability.

32 Directors' or officers' defences

Are there specific defences in the case of directors' or officers' liability?

Under applicable PRC laws and regulations, a company's directors and officers may be liable to criminal liabilities or face administrative penalties in the case of the company's infringement or breach of environmental laws. For example, according to article 83 of Law on the Prevention and Control of Water Pollution, the 'officer in charge'



Sarah Stokoe
Stéphane Gasne

stokoe@gide.com
gasne@gide.com

Beijing office

Suite 3501, Jing Guang Centre
Hu Jia Lou, Chaoyang District
Beijing 100020
China
Tel: +86 10 65 97 45 11
Fax: +86 10 65 97 45 51
www.gide.com

Shanghai office

Suite 2008, Shui on Plaza
333 Huai Hai Zhong Road
Shanghai 200021
China
Tel: +86 21 53 06 88 99
Fax: +86 21 53 06 89 89

or ‘responsible person’ may face a penalty amounting to 50 per cent of his or her yearly income from the company. Force majeure, the victim’s own fault or any third party fault may be claimed in order to obtain release from or mitigation of liability, but there are no specific defences in the case of directors’ or officers’ liability.

33 Appeal process

What is the appeal process from trials?

The appeal process depends on the nature of the first judicial decision. The relevant procedure is detailed accordingly in the Criminal Procedure Law (promulgated in 1979 and amended in 1996), Civil Procedure Law (promulgated in 1991 and amended in 2008) and Administrative Procedure Law (promulgated in 1989).

International treaties and institutions

34 International treaties

Is your country a contracting state to any international environmental treaties, etc?

Yes. China is a contracting state to many international environmental treaties, including, without limitation the Basel Convention and Kyoto Protocol.

35 International treaties and regulatory policy

To what extent is regulatory policy affected by these treaties?

A number of regulatory policies have been enacted in accordance with these international environmental treaties. For example, the Measures for the Operation and Management of Clean Development Mechanism Projects promulgated in October 2005 were formulated pursuant to the United Nations Framework Convention on Climate Change and the Kyoto Protocol for the purpose of promoting the effective implementation of the Clean Development Mechanism projects in China.

Similarly, in order to better implement the Convention on Biological Diversity in China, many laws and regulations have been enacted. Among others, the National Plan for Biological Species Resources Protection and Use (promulgated in 2007) clearly sets out China’s strategic plan for biological species protection from the year 2006 to 2020, and the National Plan for Aquatic Biological Resources Conservation (promulgated in 2006) intends to better protect aquatic biological resources in China.