

Country Profile: China

Editor's Note: This is part of a series of articles summarizing various countries' government and SH&E legislative processes. It is intended to serve as a useful planning tool for SH&E professionals preparing to conduct business in the profiled country. **Click here** to view previous profiles. This article is provided courtesy of AECOM. Contact Halley Moriyama at halley.moriyama@aecom.com, +1 (978) 589-3233 for additional country information.

China is a socialist state with a highly centralized government, with the National People's Congress (NPC) being the supreme organ of state power. NPC, which has about 3,000 deputies, meets annually in the first quarter of the year, to pass national laws and to approve the annual

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economic and social development plan and budget. Deputies to NPC are elected by provincial People's Congresses, which in turn are elected by the People's Congresses at the next lower level. Deputies at the lowest level of government are directly elected by the people in elections. People's Congresses have become more responsive to popular concerns, including environmental protection.

NPC is China's national legislative body with powers to amend the Constitution and to supervise its enforcement, enact "basic statutes" and examine and approve the national economic and social development plans and state budgets, among other responsibilities. The Standing Committee is NPC's permanent

body whose legislative powers include the interpretation of the Constitution and statutes and the enactment of statutes (except for those statutes that are designated as "basic statutes" such as the Criminal Law).

The Standing Committee is a small legislative body with about 150 members that meets every other month. NPC also has specialized legislative committees, including the Environmental Protection and Resources Conservation Committee, which reports to the NPC Standing Committee between NPC meetings. The specialized legislative committees, with their special expertise and operation, take the responsibility of researching, reviewing and proposing draft laws.

NPC elects the president of China who appoints the premier of the State Council, who in turn, is subject to NPC approval. The State Council, namely the central government, is NPC's executive body and the highest organ of the state administration. The council is responsible for carrying out the principles and policies of the Communist Party of China, as well as the regulations

and laws that NPC adopts, and for addressing China's internal politics, diplomacy, national defense, finance, economy, culture, education, etc. Under the current constitution, the State Council exercises the power of administrative legislation, the power to submit proposals, the power of administrative leadership, the power of economic management, the power of diplomatic administration, the power of social administration and other powers granted by NPC and its Standing Committee.

After the latest government restructure, the State Council has 27 member ministries and commissions (cabinet members). Meanwhile, the State Council also has several special organizations (such as State Administration of Work Safety or SAWS), which are under the State Council, together with offices, institutions, administrations and bureaus, which are under the member ministries and commissions.

Several levels of local governments (namely, provincial, prefecture and county) are below the central government, each of which typically has an executive body (akin to the State Council) along with commissions, bureaus and agencies that are subordinate both to the government in that jurisdiction and to the corresponding central government organization. These subsidiary bodies are sometimes collectively referred to as bureaus. Directly beneath the central government are 23 provinces and 11 other provincial-level bodies. The latter encompass the five autonomous regions (i.e., minority areas such as Tibet and Inner Mongolia), the two special administrative regions (Hong Kong and Macau) and the four directly administered municipalities (Beijing, Tianjin, Shanghai and Chongqing). In addition, 10 provincial capitals are treated as vice provincial capital cities, and five other cities are treated as specially listed planning cities, which have more economic independence from the national government than nonlisted cities. It is also worth noting that China considers Taiwan to be a constituent province. A list of the administrative divisions is provided in the sidebar on p. 16. A map of China can be viewed at www.worldatlas.com (last accessed in June 2008). Click on the Asia Map, then on China to see a map of China as well as links to more detailed maps.

SH&E AUTHORITIES

The Ministry of Environmental Protection (MEP), formerly known as the State Environmental Protection Administration (SEPA), was elevated to the position of a cabinet member of the State Council in March 2008. Like the former SEPA, MEP is responsible for rule and policy-making and their implementation at the national level with respect to most areas of environmental protection. However, MEP has the additional new responsibility of regulating the environmental impacts of nuclear power generation

(with the Bureau of Nuclear Safety). MEP, like other cabinet members of the State Council, is headquartered in Beijing and reports directly to the State Council. The latest government restructuring makes MEP's voice louder in the country's decision-making process, and it reflects China's political will and institutional support to implement "science-based development."

MEP is not the only national authority responsible for environmental protection in China. The National Development and Reform Commission (NDRC), which exercises broad planning and project-approval authority, has an environmental protection department (namely, the Department of Environment and Resources Conservation). With respect to line departments, the Ministry of Agriculture is responsible for the registration, approval and examination of chemical pesticides and fertilizers, and for ensuring the safety of genetically modified agricultural organisms.

In China, national environmental policy issues are kept separate from safety and health policies. Since the kickoff of China's industrialization in 1954, the leading administrative authority concerning safety and health has changed several times, especially during a few rounds of the State Council restructuring in the past 2 decades. A few government agencies have shared the responsibilities of safety and health administration, such as the former Ministry of Labor, the former State Planning Commission, the former State Economic and Trade Commission (SETC), and the Ministry of Health. Currently, the key safety and health authorities are the Ministry of Health, the State Administration of Work Safety (SAWS), the Ministry of Human Resources and Social Security (just established in March 2008; formerly known separately as Ministry of Labor and Social Security) and General Administration of Quality Supervision, Inspection and Quarantine.

SAWS, which was strengthened in terms of authority and responsibility in February 2005 when the State Administration of Coal Mine Safety became its affiliated organization, is responsible for the management, supervision and inspection of work safety nationwide and for drafting related laws, regulations and standards. The responsibilities of the Ministry of Human Resources and Social Security include drafting basic regulations and standards to govern workplace injury as well as their implementation and supervision. This ministry is also responsible for developing special policies to protect women and workers under age 18.

The General Administration of Quality Supervision, Inspection and Quarantine, a ministerial-level agency, is responsible for making regulations, policies and standards on quality supervision, inspection and quarantine of import and export-related activities and products. It is also in charge of safety regulation and supervision of special equipment such as boilers, high-pressure containers and elevators. Other ministries also have administrative responsibilities for work safety within their respective jurisdictions, including the Ministry of Housing and Urban-Rural

Development (formerly known as Ministry of Construction), the Ministry of Public Security, the Ministry of Transport (newly established by combining the former Ministry of Communications and the General Administration of Civil Aviation) and the Ministry of Railways.

With regard to occupational disease, health and hygiene matters, the Ministry of Health, in particular through its Supervision Bureau and the Chinese Center for Disease Control and Prevention, which is affiliated with the Ministry, is the primary authority. Its responsibilities include drafting legislation, construction project management, supervision of occupational health, diagnosis of occupational diseases, capacity building and training, information reporting and management, etc. Meanwhile, the work safety authority is responsible for occupational hazard reporting, on-site supervision and management of occupational health, organizing inspections for occupational accidents, etc. The Labor Authority (i.e., the Ministry of Human Resources and Social Security at the national level and Labor Bureau at local level) is responsible for work insurance, labor contracts, case management and guarantees for the interests of patients suffering from occupational diseases.

In addition to the national authorities, the environmental protection bureaus, work safety supervision bureaus, health bureaus and related subordinate bodies at the provincial, prefectural and county levels all have responsibilities similar to their counterparts at the national level. These subnational authorities are responsible for implementing national regulations, policies and standards in addition to supervising local compliance. Local authorities at the provincial level may also establish their own environmental standards in the form of regulations or detailed rules, provided that they are consistent with national legislation and economic and social plans. These provincial level governments may also enact more stringent regulations than those of the central government.

ENFORCEMENT OF SH&E LEGISLATION ***Administrative Actions***

If a party violates environmental laws, regulations or standards, the environmental authorities or other relevant administrative authorities responsible for enforcement under the law may impose administrative sanctions against the responsible party. Such sanctions may include disciplinary warnings, fines, confiscation of illegal gains, orders for suspension of production or use, withholding or cancellation of permits or other certificates of similar character and other types of administrative penalties as prescribed by the environmental protection laws, regulations and rules (including administrative detention, administrative orders and time-specific orders for correction measures).

National laws and regulations typically specify an allowable range of fines, and they are modified so as to provide enterprises with stronger economic incentives and disincentives. For instance, Articles 46 to 62 of the Law of the People's Republic of China on Prevention

and Control of Air Pollution (2000) states that a fine of approximately \$73,000 may be imposed upon enterprises that have caused severe air pollution. Articles 38-47 of the Implementing Rules on the Law of the People's Republic of China on the Prevention and Control of Water Pollution (2000) state that a fine of approximately \$145,000 may be imposed for various water pollution violations.

Furthermore, China's environmental legislation includes more detail on liabilities, as can be seen from the revised Law of the People's Republic of China on Prevention and Control of Water Pollution, which took effect on June 1, 2008. The revised law contains 22 articles within the Chapter of Liabilities, which is a great increase over the former edition in 1996. Compared to the old version, the new law specifies a broader scope for judging violations and imposing fines, and it also prescribes sanctions for restricted or forbidden activities. There is also a provision for detailed calculations based on direct losses from water pollution accidents. This provision appears to provide much stronger incentives for enterprises, since an accident resulting in water pollution would have the potential to bankrupt an enterprise.

For work safety issues, administrative actions are taken to address violations, as provided in the Measures on the Administrative Sanctions for Work Safety Violations (effective July 1, 2003, promulgated by SAWS). Administrative sanctions include disciplinary warnings, fines, confiscation of illegal gains, orders of violation suspension, shutdown orders, detention, withholding and cancellation of permits or other certificates of similar character and other types of administrative penalties as prescribed by the work safety laws, regulations and rules.

The Law of the People's Republic of China on Safe Production and Measures on the Administrative Sanctions for Work Safety Violations include detailed provisions on work safety violations that cover such issues as investment, hiring of and training for working staff on work safety, establishment of safety facilities for construction projects (including dangerous substance production and storage), inspection and approval of the production and use of dangerous articles, compensation for injuries and deaths, etc. In addition to the highest fines of approximately \$29,000 or fines up to five times that of illegal gains, according to the severity of pollution damage, other penalties such as shutdown orders may also be applied.

Strict Civil Liability

Under Chinese environmental law, a responsible party (individual or legal person) is liable for damages caused by environmental pollution and other hazards, and it should bear civil liability of compensation for losses or remediation. Damages can stem from harm to individuals or property.

Several Chinese laws have adopted a strict liability

approach ("liability without fault") to determine environmental liability. These include the Law of the People's Republic of China on Environmental Protection (1989), the Law of the People's Republic of China on Marine Environmental Protection, Law of the People's Republic of China on the Prevention and Control of Air Pollution and Law of the People's Republic of China on Prevention and Control of Water Pollution.

Under such provisions, the offender is liable for compensation to victims wherever damage is proven, without the prerequisite of the offender's fault or violation of law. For environmental tort, "inversion of onus probandi" applies as the principle for determining the causality between offense and damage. Furthermore, the offender is liable for the full cost of environmental pollution, plus additional compensation in the case of psychological damages.

In the newly revised Law of the People's Republic of China on Prevention and Control of Water Pollution (2008), Article 85 further describes liabilities in specific situations. The statute of limitations for an action for damages is 3 years, which begins from the time the injured party knew or should have known of the pollution damages (Article 42 in the Law of the People's Republic of China on Environmental Protection, 1989). Available defenses as exemptions from liability (exemption from liability is generally referred to in Article 41 in the Law of the People's Republic of China on Environmental Protection, Article 43 in the Marine Environmental Protection Law and Article 42 in the Law of the People's Republic of China on Prevention and Control of Water Pollution) include force majeure, acts of war, natural disasters or calamities and pollution damage resulting entirely from the intentional or wrongful act of a third party or from the injured party (Wang, 2000).

China also is one of the few countries outside the common law tradition that allow lawsuits comparable to those known in the U.S. as class actions. The Civil Procedure Law (1991) provides for litigation with multiple plaintiffs and/or defendants under Article 54 (when the number of litigants is fixed) and Article 55 (when the number of litigants is indeterminate). These actions are particularly suited to environmental disputes. Many environmental suits involving multiple plaintiffs and/or defendants have been litigated (see Liebman, 1999; Harvard Law Review, 1998). The newly revised Law on Prevention and Control of Water Pollution (2008) also contains prescriptions on class actions in Article 88.

Provisions of the Regulation on Insurance for Industrial Injury protect occupational safety and health (2003). These provisions stipulate that working staff should have medical insurance for industrial injury. The regulation also has detailed provisions on treatments, compensation and subsidies. The later-enacted Measures on the Lump-Sum Compensation by Enterprises with Illegal Employment Involved (2003) reinforce the specific requirements on industry injury. Additionally, it should

be noted that work safety fees, work safety insurance, social insurance for work injuries and other economic policy tools have been gradually implemented.

In December 2004, the Shanxi government established the highest compensation level for coal mine injury and death in China, providing that monetary compensation should be no less than approximately \$29,000. Currently, China is making efforts to establish a uniform standard for injury and death compensation, which might reach as high as the 20-year-salary for an adult employee on the basis of the average local salary level of the previous year or be directly set at approximately \$29,000, which is still low compared to levels in many other countries.

Criminal Sanctions

Both the Criminal Law and environmental regulations have provisions that allow for criminal sanctions for serious violations (Lai, et al., 1993). The Criminal Law, as amended in 1997, now includes a section with special application to environmental crimes, namely Chapter VI, Section 6, Crimes of Undermining Protection of Environmental Resources, although other provisions in the Criminal Law (including provisions providing for more stringent sanctions) may also apply to environmental offenses.

Article 338 governs unlawful discharges onto the land or into water bodies or the atmosphere, of radioactive, medical, hazardous, and toxic substances and pathogenic wastes causing serious harm.

Article 339 governs unlawful dumping, piling and disposal of imported solid wastes within China, and it also contains provisions concerning the import of solid wastes as raw materials and those that are prohibited from use as raw materials.

Criminal sanctions based on the seriousness of incidences include fixed-term imprisonment or criminal detention and concurrent or independent fines.

Various environmental laws have provisions, which fall within the orbit of criminal sanctions, including:

- Article 57 of the Law of the People's Republic of China on Prevention and Control of Water Pollution, as amended, states that a water pollution accident, which causes serious damage to public or private property or injury or death to people may give rise to criminal prosecution of the responsible personnel in accordance with Articles 115 and 136 of the Criminal Law.

- Article 61 of the Law of the People's Republic of China on the Prevention and Control of Air Pollution, as amended, similarly states that where air pollution causes serious damage to property or casualties, a criminal investigation may be initiated under what are now Articles 115 and 136 of the Criminal Law.

Similar criminal sanctions are provided for in other environmental laws, including the Law of the People's Republic of China on Marine Environmental Protection, the Mineral Resources Law, the Forestry Law and the Fisheries Law (Lai, et al., 1993).

For violations of safety and health laws and regulations where the illegal act is suspected of constituting a crime, Law of the People's Republic of China on Safe Production and Law of the People's Republic of China on Prevention and Control of Occupational Disease have also stipulated that criminal liabilities must be investigated according to the Criminal Law. The following are of particular note:

- Article 135. Personnel who are directly responsible in any factories, mines, forestry centers, construction enterprises or other enterprises and institutions that have labor safety facilities failing to conform with the state's regulations and who do not take measures to prevent hidden dangers after a request is made by relevant departments or the units' staff and workers, thereby giving rise to major accidents involving injury or death or other serious consequences, will be sentenced to no more than 3 years of fixed-term imprisonment or criminal detention. When the circumstances are particularly serious, the sentence is no fewer than 3 years but no more than 7 years of fixed-term imprisonment.

- Article 136. Whoever violates the regulations on the control of articles of an explosive, combustible, radioactive, poisonous or corrosive nature, thereby giving rise to a major accident in the course of production, storage, transportation or use and causing serious consequences, will be sentenced to no more than 3 years of fixed-term imprisonment or criminal detention. When the consequences are particularly serious, the sentence is no fewer than 3 years but not exceeding 7 years of fixed-term imprisonment.

Recent dialogues among Chinese government officials have pointed out that the current criminal sanctions are inadequate to deal with violations of work safety laws and regulations.

COMMENTS ON ENFORCEMENT PRACTICES

Enforcement is widely recognized within China as the country's most significant regulatory problem. Enforcement is hampered by inadequate funding, insufficient data, personnel shortages, the priority placed on economic development, low levels of environmental consciousness and weak sanctions. With respect to sanctions, pollution levies are generally set below the marginal cost of pollution control and are not based on all pollutants or the quantities discharged or emitted; fines are imposed infrequently and inconsistently; criminal sanctions rarely apply and public security personnel, prosecutors and judges have historically not placed a high priority on environmental offenses. Although older laws and regulations often do not refer to private entities because they did not anticipate the structural changes that have occurred in the economy, in practice their application is universal. Nevertheless, outdated measures are more difficult to apply and may not efficiently address all parties whose conduct is to be regulated.

There is a notable tendency toward stricter enforce-

ment of environmental regulations when foreign companies are involved (Zhang-Ferris, *Foreign Investors*, 1997). One commenter noted the following:

“Regulations are strictly enforced against foreign companies investing in PRC but not against locals. It is a deep-pocket argument. It would cost a lot for local companies to upgrade to environmental standards required by law, but foreign companies investing in China are assumed to have the money to handle it” (Asia Law, 1996).

Over the past 2 years, the Chinese government has become increasingly concerned with the gap between law and implementation that is often associated with China’s legal regime. National and international pressure and financial support are leading to deliberations over, development of new approaches to and resources for the implementation of Chinese laws. Some of this pressure derives from China’s recent accession to the World Trade Organization and role as host of the 2008 Olympics. As a result of these events, the efficacy of China’s laws is subject to growing domestic and foreign scrutiny.

The establishment within MEP of the Environmental Emergency and Incident Investigation Center was officially announced in March 2002. The center is responsible for investigating violations of Chinese environmental laws, supervising related enforcement proceedings and assisting MEP officials with the formulation of policies and standards applicable to the enforcement of environmental laws. Although it is still too early to determine whether the center will help improve the effective, consistent and equal application of Chinese environmental laws, the center will no doubt augment China’s meager enforcement resources (Ferris-Zhang, *Rule of Law*, 2002).

In 2003, the Environmental Emergency and Incident Investigation Center, in coordination with other authorities, issued orders and closed down 7,339 illegal waste releasing factories, 51% of which were small electroplating factories, small chemical plants etc. and whereby the technologies have been categorized as out of date by the state (Xinhua Net, Feb. 23, 2004).

Partly in response to this scrutiny, as mentioned earlier, the former SEPA (currently MEP) has been promoted to a cabinet member of the State Council. Additionally, it can be noted that so-called “environmental enforcement storms” (i.e., sporadic bursts of very strict enforcement of environmental regulation, often corresponding with failure to meet national or provincial goals on environmental protection) have had greater impact on enterprises and local governments alike, indicating that enforcement will no longer be lenient.

With respect to occupational health and safety law enforcement, current meager inspection and enforcement resources are focused on addressing China’s numerous mining accidents. However, government officials have called for additional enforcement resources to address industrial safety accidents and worker health problems in other industries as well.

AUDIT PRIVILEGE

No provisions in Chinese law establish protection against enforcement action as a result of adverse findings uncovered during a self-initiated compliance audit.

Article 14 of the Law of the People’s Republic of China on Environmental Protection authorizes environmental inspectors to collect information during onsite inspections, and the Law of the People’s Republic of China on Environmental Protection contains no provisions with respect to privilege (although inspectors are required to protect the confidentiality of proprietary information). Under Article 45(1) of the Criminal Procedure Law (1996 amendment, effective Jan. 1, 1997), the courts, prosecutors and public security organs have the authority to gather evidence from organizations and individuals, who are obligated to provide such information upon request. Article 45(2) provides that state secrets must be protected by the organs gathering evidence but makes no provision for the protection of information held by enterprises or individuals. Under Article 84, all units and individuals that discover criminal facts or suspects have the right and duty to report such facts to public security organs, prosecutor or courts. Under Article 110, all persons have the obligation to deliver evidence related to the guilt or innocence of persons accused of criminal conduct. These provisions are relevant to any self-initiated compliance audit that may uncover possible criminal violations.

China’s Lawyers Law obligates attorneys to protect state secrets and their clients’ economic (commercial) secrets but not confidences. Therefore, conducting an audit under the auspices of a local lawyer does not necessarily establish privilege in China.

ACCESS TO INFORMATION

Although information generally has become much more widely available in China since the late 1970s, access in many instances remains challenging. In some cases, policy documents and standards may be unpublished or not readily accessible. Nonetheless, China is gradually developing practices and mechanisms that foster the increased flow of regulatory information. China has adopted many of these practices and mechanisms in response to transparency and notification commitments set forth in World Trade Organization agreements. China has made progress on information disclosure, particularly on environmental information disclosure. Since the State Council issued the Government Information Disclosure Regulation in January 2007, MEP issued the Measures for the Disclosure of Environmental Information (Trial Implementation), which is the first national government initiative on information disclosure and which took effect on May 1, 2008.

Despite the many challenges associated with accessing SH&E regulatory information in China, the regulated community, including foreign investors, remains responsible for compliance with Chinese laws regardless of their accessibility.

CONTAMINATED LAND

Applicable Laws

China has not adopted laws specifically requiring that cleanup take place or that impose U.S. Superfund-type retroactive, joint, several and strict liability on potentially responsible parties for existing contamination of soil and groundwater. However, various laws contain provisions, which can be applied to soil and groundwater contamination situations. To start, from a liability perspective, the Polluter Pays principle is expressed in Article 41 of the Law of the People's Republic of China on Environmental Protection (1989):

“Those who cause harm from environmental pollution shall have the responsibility for removing the harm and for compensating units or individuals that suffer direct losses.”

Other key laws include the following:

The Law of the People's Republic of China on Prevention and Control of Water Pollution, as amended, contains several provisions that apply to site contamination, including the following:

- The discharge of any oil, acid or alkaline solutions or deadly toxic liquid waste into any water body is prohibited (Article 29);

- The washing in any water body of vehicles or containers, which have been used for storing oil or toxic pollutant is prohibited (Article 30);

- The discharge or dumping into any water body or the direct underground burying of deadly toxic soluble slag, tailings, etc. containing such substances as mercury, cadmium, arsenic, chromium, lead, cyanide and yellow phosphorus is prohibited (Article 31);

- The discharge or dumping of industrial waste residues, urban refuse or other wastes into any water body is prohibited (Article 32);

- The discharge or dumping of radioactive solid wastes or of wastewater containing any high- or medium-level radioactive substances into any water body is prohibited (Article 34);

- Enterprises are prohibited from discharging wastewater containing toxic pollutants or pathogens or dumping other wastes into seepage wells, cesspools, crevices or karst caves (Article 41);

- At places where no satisfactory impervious strata exist, enterprises are prohibited from using ditches, pits or ponds, which are without safeguards against seepage for conveyance or storage of wastewater containing toxic pollutants or pathogens or of other wastes (Article 42).

Chapter 3 of the Law of the People's Republic of China on the Prevention and Control of Environmental Pollution by Solid Wastes requires that the units and individuals that produce, collect, store, transport, use or dispose of solid waste must prevent pollution caused by solid waste. A reporting and registration system for industrial solid waste must be implemented, and those units that produce industrial solid waste must present data concerning the volume of waste they produce, its

direction of flow and the methods of storage and disposal to the administrative authority on environmental protection under the local people's government at the county level or above, in accordance with the regulations of the administrative authority of environmental protection under the State Council. Chapter 4 of the law provides that hazardous wastes must be disposed of properly in accordance with the relevant regulations of the state.

The Land Administration Law, as amended in 2004, stipulates that the people's government at all levels should set forth measures to prevent desertification, salinization, water and soil erosion and land contamination (Article 35).

The Regulation on the Administration of Construction Project Environmental Protection (1998) requires that environmental impact assessments be prepared for construction projects, including new construction, reconstruction, expansion and technological transformation. All potential contamination stemming from such projects, including soil and groundwater contamination, must be reflected in the assessments conducted pursuant to this regulation.

In 2007, Shenyang (the capital city of Liaoning Province) established for the first time in China a local regulation on contaminated site remediation, namely Administrative Measures of Shenyang on Remediation of Contaminated Sites. The regulation has prescribed reporting of site contamination, site assessment, liability for contaminated sites, procedure for remediation, etc.

Although China has not developed contaminated soil and groundwater “cleanup standards” per se, many voluntary and mandatory standards have been promulgated to assist with evaluation (including risk assessment) and monitoring of soil and groundwater contamination.

Liability for Preexisting Contamination

No person, including a foreign investor or foreign-invested enterprise, may own a fee interest (title) in land in China because the land is either state-owned or collectively owned. Long-term “granted” land use rights may be acquired, and land use rights are closely related to the liabilities for preexisting contamination. Currently in China, no specific law explicitly addresses liability for preexisting contamination remediation, however, the assignment of liability among the land user, land lesser and lessee is gradually gaining attention, especially for contamination caused by solid waste. Amendments to the Law of the People's Republic of China on the Prevention and Control of Environmental Pollution by Solid Wastes reemphasize the Polluter Pays principle in Article 5 of Section I and Article 85 of Section V, as follows:

- Polluters are responsible, according to the laws and regulations in China, for preventing and controlling environmental pollution caused by solid waste;

- Whoever causes environmental pollution by solid waste is obligated to eliminate any hazard, provide com-

compensation for losses according to related regulations and take measures to restore the environment.

Specifically, Article 35 has provisions concerning assigning liability for environmental pollution caused by industrial solid waste, as follows:

- Before beginning manufacturing operations or shutdown of an enterprise/unit, enterprises/units that generate industrial solid waste must implement pollution prevention and control measures for facilities that store and treat industrial solid waste. They must also dispose of untreated industrial solid waste properly to prevent environmental pollution.

- If there is business transfer of an enterprise/unit that has generated industrial solid waste, the acquiring enterprise/unit must implement appropriate treatment measures for those untreated solid waste or take measures to ensure safe operation of the facilities for storage and treatment of industrial solid waste. If the parties to the transfer had an agreement before the transfer concerning pollution prevention and assigning responsibility for the control of industrial solid wastes and their storage and treatment facilities, the agreement applies; however, no such agreement may exempt both parties from liabilities.

- For those enterprises/units that discontinued operations before the enforcement of this law, the cost of properly treating remaining untreated industrial solid wastes and their storage and treatment facilities is borne by the applicable government administration. However, if the enterprise transferred its land use rights lawfully, the transferee of the land use right is liable for the costs of treatment. If the parties to the transfer had an agreement before the transfer concerning pollution prevention and assignment of responsibility for the control of industrial solid wastes and their storage and treatment facilities, the agreement applies; however, no such agreement may exempt both parties from liabilities.

Note: The term “transferred land use rights” only refers to transactions, which give the land use rights to private entities. It does not refer to transactions, which give the land use rights back to the government.

On June 1, 2004, SEPA promulgated the Circular on Earnestly Accomplishing Environmental Pollution Prevention and Control Work in the Enterprise Relocation Process, which is the first mandatory measure on assignment of responsibility for assessment and remediation, both before and after property transfers. In June 2008, MEP issued the Circular on Strengthening the Prevention and Control of Soil Contamination. Major points from this legislation are as follows:

- Between 2006 and 2008, China’s environmental authority is conducting a nationwide investigation to determine baseline soil conditions (groundwater conditions will not be investigated at this time) and will also establish a contaminated site inventory and information management system.

- The environmental authority will establish a risk assessment system and a remediation system for contaminated sites. For those sites with preexisting contamina-

tion or for other potentially contaminated sites, the environmental authority will urge “the responsible entity” to conduct a risk assessment. Note that the circular does not indicate whether “the responsible entity” is a suspected polluter determined by the environmental authority or the current occupant or lessee nor does the circular indicate how the identity of “the responsible entity” is to be determined. Following the risk assessment, the environmental authority will assign responsibility for the remediation and determine the appropriate technical requirements, supervise the remediation and reduce the risks for land reuse and for residential use in particular.

- For preexisting soil and groundwater contamination, the original polluter will be responsible for the remediation and recovery. The Circular does not state how the “original polluter” will be identified. When regional or centralized land use (e.g., an industrial park, etc.) is changed, the environmental authority will urge the responsible entity to carry out a risk assessment of the contaminated land and to consider the conclusions of the assessment as the basis for a strategic environmental assessment. Note that the circular does not indicate whether “the responsible entity” is a suspected polluter determined by the environmental authority or the current occupant or lessee nor does the circular indicate how the identity of “the responsible entity” is to be determined.

Where an enterprise that caused contamination has been altered due to system transformation or merger, acquisition or divestiture of a business unit, the succeeding enterprise must take responsibility for remediation unless responsibility has been otherwise defined by contractual agreement between the parties. However, no such contractual agreement may exempt all parties of the responsibilities for pollution prevention and control.

If the polluter who should be responsible for the remediation of contaminated soil or groundwater has terminated its business (not including system transformation, merger, acquisition or divestiture of a business unit) or if the identity of the polluter cannot be determined, the local people’s government will take charge of the remediation.

Note: The circular does not indicate how the identity of “the polluter who should be responsible for the remediation of contaminated soil or groundwater” is determined. However, if one of the two situations above occurs and the land-use right of the responsible polluter has been lawfully transferred, the current land-use right owner (transferee) is liable for the remediation unless the responsibility is otherwise assigned by contractual agreement between the parties. However, no such contractual agreement may exempt all parties from responsibility for pollution prevention and control.

- The circular states that “enterprises in major industries such as chemical, electrical plating, oil storage, etc., shall strengthen their monitoring and supervision management, and once any contamination is discovered, shall treat it immediately.”

- The circular states that “according to the principle of ‘Polluters Pays,’ those who caused soil or groundwater contamination must take responsibility for remediation and treatment.”

Currently, China is formulating and amending laws and regulations at a fast pace. Future laws and regulations are expected to contain additional details and provisions relating to site contamination liability. MEP is researching and discussing a Law on the Prevention and Control of Soil Contamination, with planned promulgation sometime in the next five years.

On a local level, the Shenyang Measure establishes the following provisions for assigning responsibility for existing contamination:

- If the site is assessed to be a contaminated site, the owner of the land-use right must conduct remediation or the owner must bear the cost of remediation.
- If the owner of land-use right is bankrupt or out of business and its land-use right is expropriated by the state, the local government will bear the cost of remediation.
- A facility that is relocating its operations shall figure into its relocation costs the costs for remediating any contamination on its former site.
- If the responsibility for contamination is not clear, the local government will conduct the remediation. In this case, an attempt will be made to recover the remediation costs through land leasing revenue earned after the remediation is complete.

CLEANUP STANDARDS

China has promulgated many voluntary and mandatory environmental standards to assist with the evaluation (including risk assessment) and monitoring of soil and groundwater contamination. While these standards do not constitute or specify historical contamination cleanup values, they may prove useful to those who wish to identify parameters by which to assess facility soil and groundwater contamination. These standards are also useful as risk management approaches for facilities in China.

Chinese legislative staff discussed the appropriateness of U.S. Superfund-type legislation for China as recently as 1990. These conversations ended with the decision that some approach to address the historical contamination of soil and groundwater is necessary, as can be perceived from the legislative planning of the Law on the Prevention and Control of Soil Contamination. However, the legislative staff members determined that a regime that relies on the use of the courts as a critical component in the cleanup process was not appropriate at that time.

Against this backdrop, Chinese legislators and their advisors are contemplating whether to revisit the issue of developing legal measures that may spur the remediation of contaminated sites. In this regard, Chinese government advisors have been carefully monitoring developments with respect to contaminated land legislation in the U.S., Japan and Taiwan. Hence, an enterprise may wish to review the following standards with the aim of better assessing the status of soil and groundwater at their manufacturing sites.

Risk Assessment Criteria for Soil Environmental Quality at Manufacturing Facilities—HJ/T 25-1999

These criteria set forth risk assessment parameters for soil and groundwater at industrial sites. SEPA (now MEP) officials indicate that the values were developed to help define acceptable levels of risk for soil and groundwater contamination. Groundwater under the criteria includes groundwater that is used or contemplated for use as a drinking water source.

Environmental Quality Standards for Soils—GB 15618-1995

These standards comprise mandatory requirements applicable to land used for agriculture/vegetables, tea plantations, orchards, grazing, forests and nature conservation. The pollutant values set forth in the standards represent maximum allowable concentrations of soil pollutants that are consistent with the functions, protection aims and properties associated with the soils.

Quality Standards for Ground Water—GB/T 14848-93

These standards establish mandatory provisions for the evaluation of a variety of classes of groundwater.

Many technical guidelines have also been issued that provide references for sampling for soil contamination evaluations. These include Soil Quality-Determination of Lead and Cadmium-Graphite Furnace Atomic Absorption Spectrophotometry—GB/T 17141-1997, effective Dec. 1, 1997.

PROPERTY TRANSFER LEGISLATION

At the present time, no property transfer legislation exists with respect to soil and groundwater contamination. However, it is important to note that MEP advises that companies transferring ownership of facilities and/or land-use rights should submit to the local environmental authority written information on these changes based on the requirements set forth in the Management Provisions on the Reporting and Registration of Pollutant Discharges (1992). This information may be characterized as “notifications of change of ownership.”

Based on available information, no specific measures governing presale requirements involving permit transfers have been developed. MEP officials indicate that such provisions are being developed at the present time and may, although it is not certain, be promulgated within the next 5 to 10 years.

REPORTING OBLIGATIONS *Accidental Spills & Releases*

Article 31 of Law of the People’s Republic of China on Environmental Protection (1989) provides that “any unit that, as a result of an accident or any other exigency, has caused or threatens to cause an accident of pollution, must promptly take measures to prevent and control the pollution hazards, make the situation known to such

units and inhabitants as are likely to be endangered by such hazards, report the case to the local administrative authority on environmental protection and related departments and accept their investigation and decision.” In addition, Article 31 specifies that enterprises which through an accident or other type of incident cause serious environmental pollution must immediately institute measures to eliminate or reduce the pollution hazard.

Key measures applicable to the reporting of accidental spills and releases also include the following:

- The Management Provisions on the Reporting and Registration of Pollutant Discharges (1992) require all enterprises that directly or indirectly discharge pollutants, generate industrial/construction noise or solid wastes to conduct pollutants discharge reporting and registration. Registration information includes the type, quantity, and concentration of pollutants that may be discharged, discharge pathway, discharge point, method of discharge, pollution prevention and control facilities and storage, use and disposal site.

- The Regulations on Management of Environmental

Protection of Construction Projects (1998) specifies that environmental impact assessments must be conducted with respect to construction projects, including new construction, reconstruction, expansion and technological transformation. Among other things, the regulations require that contamination that is expected from or associated with a proposed project should be indicated in the environmental impact statement or form describing the results of the environmental assessment.

CONTAMINATION IDENTIFIED DURING SAMPLING

In China, other than requirements associated with accidental spills or releases of contaminants during the sampling process, presently no reporting requirements apply to sampling activities that identify contaminants. The Law of the People’s Republic of China on Environmental Protection encourages, but does not mandate, reporting of environmental pollution by third parties, which could include organizations retained by a company to undertake sampling at a manufacturing site.

Specifically, Article 6 of the Law of the People’s Republic of China on Environmental Protection provides that “all units and individuals have the obligation to protect the environment and shall have the right to report on or file charges against units or individuals that cause pollution or damage to the environment.” While it is unlikely that such parties would undertake to report contamination identified during sampling, the existence of this measure may afford some protection to whistleblowers and also underscores the importance of protecting sampling reports from unrestricted distribution.

A company that has stipulated to the Chinese government (verbally or through written communications) that its SH&E procedures require it to go beyond compliance (e.g., implement SH&E standards and practices that go beyond what is required by host-country law) with respect to operations in China, may face an awkward government relations situation if the Chinese officials subsequently learn that this company has not reported contamination identified during the sampling process.

KEY AGENCIES

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Administrative Divisions

Provinces

Anhui
Fujian
Gansu
Guangdong
Guizhou
Hainan
Hebei
Heilongjiang
Henan
Hubei
Hunan
Jiangsu
Jiangxi
Jilin
Liaoning
Qinghai
Shaanxi
Shandong
Shanxi
Sichuan
Yunnan
Zhejiang
Taiwan

Vice-Provincial Capital Cities

Changchun
Chengdu
Guangzhou
HangZhou
Harbin
Jinan
Nanjing

Shenyang
Wuhan
Xian

Autonomous Regions

Guangxi
Nei Menggu (Inner Mongolia)
Ingxia
Xinjiang
Xizang (Tibet)

Directly Administered Cities

Beijing
Chongqing
Shanghai
Tianjin

Special Administrative Regions

Macau
Hong Kong

Specially Listed Planning Cities

Dalian
Ningbo
Qingdao
Shenzhen
Xiamen

Note: China considers Taiwan to be a constituent province.

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Ministry of Public Security
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General Administration of Quality
Supervision, Inspection and
Quarantine
Bureau of Particular Equipment Safety
Monitoring and Inspection
9 E. Madian Rd.
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Fax: (86-10) 8226-0180

REGULATORY INFORMATION

Environmental regulations are published in the China Environment News, which is published daily in Chinese. An eight-page English language edition is published monthly. China Environment News and the United Nations Environment Program jointly sponsor the English-language version. To order, write to:

China Environment News
(English Edition)
3 (side gate) Longtan St.
Chongwen District
Beijing 100062
People's Republic of China
Phone: (86-10) 6712-2478
Fax: (86-10) 6711-3772

China Environment News (Chinese)
16, Guangqumennei St.
Chongwen District

Beijing 100062
Office: (86-10) 6711-3786
Editor: (86-10) 6719-4786
Info: (86-10) 6710-2729

MEP's bookstore provides certain environmental regulations and standards. Also, legal bookstores often have compendia of environmental regulations (mostly in Chinese). Although mostly in Chinese, many websites have been developed in recent years that cover environmental news, laws, policies and other useful information. These include:

- China Environmental Protection (English);
- China Environment Online;
- Shanghai Environment Online;
- Cleaner Production in China.

Websites that contain health and safety news, laws, policies and other useful information are:

- China Safety;
- China Chemical Safety;
- China Occupational Safety.

The body of SH&E legislation in China is rapidly evolving and being modernized. Nonetheless, conflicting requirements still exist. There is also preprivatization legislation still in effect and applicable to the private sector even though the regulatory text is addressed to government controlled and operated facilities.

Under the laws of the People's Republic of China, SH&E legislation is hierarchically structured. NPC amends the constitution, enacts and amends basic laws. NPC's Standing Committee interprets the constitution and laws, and may exercise the functions of NPC except amending the constitution or basic laws that fall within the purview of the full NPC.

Regulations promulgated or approved by the State Council are known generically as administrative regulations. Regulations issued by ministries or other departments of the central government under their own authority are known generically as departmental regulations. Legislation is issued under various names: regulations, measures, administrative or management rules, provisions and detailed rules for implementation and may be issued in interim form as well as in final form. Generally, measures are more narrowly drawn than regulations. Detailed rules for implementation provide guidance on the implementation of statutes or regulations. The State Council and its departments also issue orders, decrees, directives, decisions, resolutions and instructions as well as interpretations of these documents.

Much overlap exists among these items. Provincial and local governments also issue regulations within their respective spheres of jurisdiction. Administrative agencies, sometimes in conjunction with the General Administration of Quality Supervision, Inspection and Quarantine, also issue technical and procedural standards. Irrespective of a document's position in this legislative hierarchy or the nomenclature associated with the document, all are generally associated with compliance obligations or expectations.

Subnational SH&E legislation in China is being developed and amended at a rapid rate. SH&E legislation at the local level in China may exceed 2,000 laws. Readers may find the *Collection of Local Regulations on Environmental Protection* (Xueyuan Publishers, Beijing, 1999), recently published by MEP, helpful. Although the collection focuses on local environmental laws and does not contain a comprehensive listing, it provides a good overview of key local environmental laws from each Chinese province and autonomous region. This source should be available from the MEP bookstore in Beijing and in the legal section of many major bookstores throughout major cities in China. ☺

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