

Overview of Main Chinese Laws and Regulations Related to Environmental Governance

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The EU-China Environmental Governance Programme (EGP) is a €18.5 million EU-funded programme implemented with China’s Ministry of Commerce and the Ministry of Environmental Protection. It comprise four themes:

1. Public access to environmental information
2. Public participation in environmental planning and decision making
3. Access to justice in environmental matters
4. Corporate environmental responsibility

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1. Overview of the Chinese Environmental Regulatory Framework

1.1 Introduction to the Chinese Environmental Regulatory Framework

The main underlying source of legal text in the environmental sector in the People's Republic of China (PRC) is the Chinese Constitution. The version currently in force is the 1982 constitution, with revision in 1988, 1993, 1999 and 2004. The Chinese Constitution essentially defines the government's structure, disciplines the law-making processes and defines basic rights.

The 2000 "Legislation Law of the PRC" aimed at establishing a hierarchy among the various Chinese laws. It stated that local regulations are subordinated to the Constitution and basic and special laws issued by central level laws and regulations.

According to Article 7 of the Constitution, the National People's Congress (NPC) and its Standing Committee exercises the legislative power of the State. The NPC enacts and amends basic laws governing criminal offences, civil affairs, the State organs and other matters. The Standing Committee also enacts and amends laws other than the ones enacted by the NPC. When the NPC is not in session, the Standing Committee can also supplement and amend laws enacted by the NPC but not in contradiction to the basic principles of such laws.

Ministries and National Agencies may submit proposals to the NPC and its Standing Committee. The Ministry of Environment (MEP) formulates policies and programs at the national level; EPBs the Environmental Protection Bureaus act at provincial and local level and collaborate with local People's Governments.

The hierarchy of Environmental regulation in China includes the following layers:

1. The Constitution;
2. National environmental laws, issued by the NPC (National People's Congress) or by the Central Committee (around 236);
3. Administrative regulations issued by the State Council (around 690);
4. Local rules and regulations issued by local institutions (around 8600).

In addition there is the national transposition of international treaties and conventions mostly UN based, for which PRC is a signatory and agreed to adhere to.

The figure 1 summarizes the different levels of laws and their interdependence.

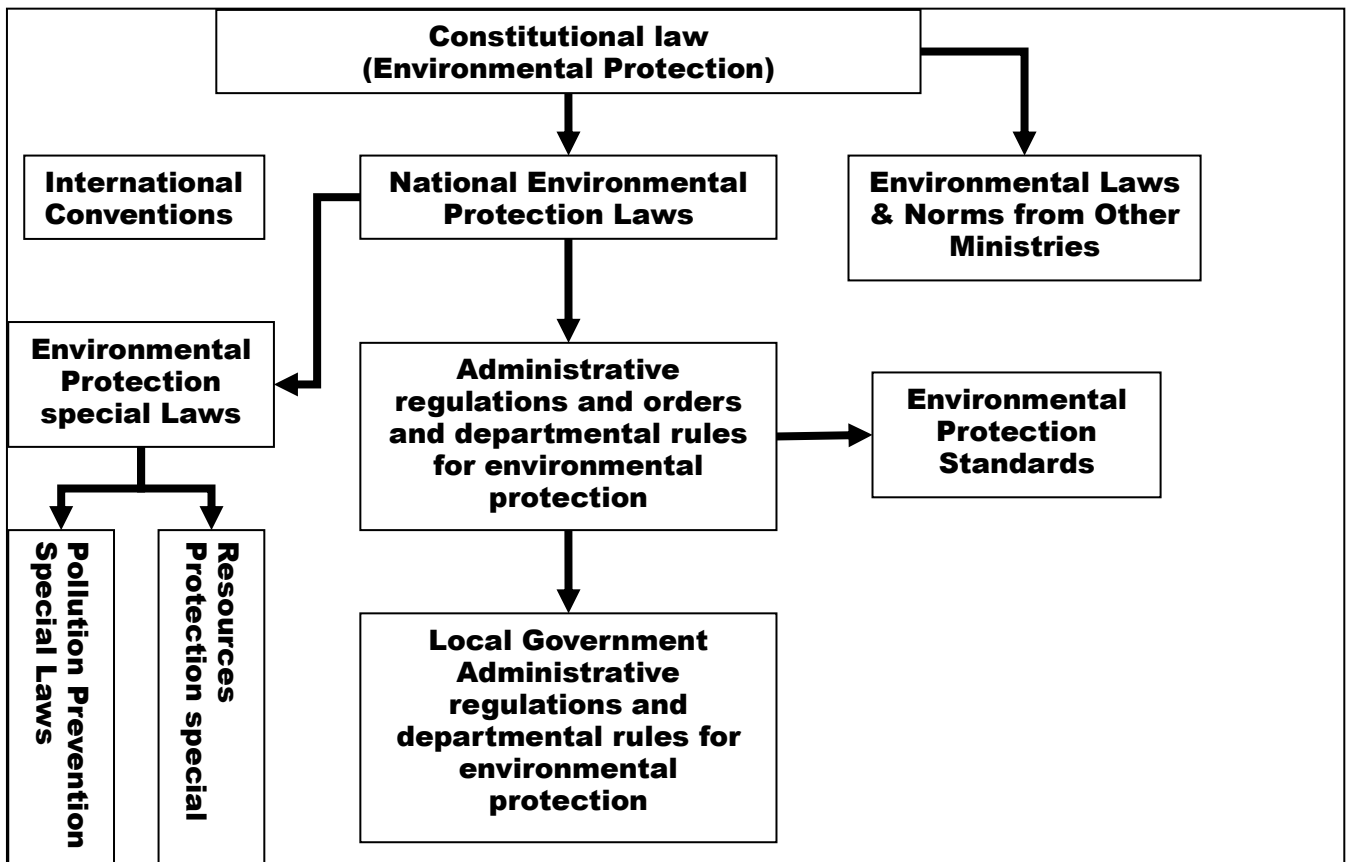


Figure 1: Framework of Environmental Protection Laws and Regulations in China

National level environmental laws are of two types; Basic laws which provide a framework for handling issues linked to a particular main environmental media, and special laws which address environmental subsectors and especially pollution control and prevention special laws or resources protection special laws.

Administrative regulations and departmental rules for environmental protection are administrative orders that provide implementation rules for specific laws.

Environmental protection standards and local government administrative regulations provide a further layer of details how the laws and regulations need to be applied at the local level.

MEP publishes usually Chinese and English versions of environmental rules and regulations on its website, but also states that that the "(...) English version is for reference only. In case any discrepancy exists between the Chinese and English text, the Chinese version shall prevail."

Main National laws so far developed by MEP (and its earlier status as SEPA or NEPA) are shown in the table 1.

Table 1: Main environmental laws under MEP

Law	Latest currently in force version
1	Environmental Protection Law 1989
2	Marine Environmental Protection Law 1982
3	Water Pollution Control Law 2008
4	Air Pollution Control Law 2000
5	Control Law for Solid Waste Pollution 2004
6	Control Law for Environmental Noise Pollution 1996
7	Radioactive Pollution Control Law 2003
8	Environmental Impact Assessment Law 2002
9	Cleaner Production Enhancement Law 2002
10	Circular Economy Enhancement Law 2008

Main other national environment related laws include:

1. The Desertification Law
2. The Forestry Law
3. The Grassland Law
4. The Fishery Law
5. The Land Administration Law
6. The Water Law
7. The Mineral Resources Law
8. The Wildlife Protection Law
9. The Water and Soil Conservation Laws

Practically environmental protection laws under MEP and laws under the other state ministries are often in conflict and weaken the laws enforcement effectiveness. This lack of coordination and coherence between laws under MEP and laws under the other state ministries is a major weakness of the Chinese legal system especially when it comes to environmental law and regulation enforcement.

Chinese environmental Law: Basic Principles

The underlying rationale for all Chinese environmental laws is to be found in the Article 9 of the Constitution. According to that article, the government is responsible for:

- Promoting rational use and conservation of natural resources;
- Protecting rare animal and plants;
- Forbidding people and institutions to harm the ecosystem.

The first “experimental” version of a basic environmental protection law was issued at the end of the 70’s (the PRC Environmental Protection Law for Trial and Implementation). It was amended and re-enacted in 1989 as an official law.

The Environmental Protection Law of the PRC promotes four guide principles:

1. The integration of economic development and environmental protection – government must adopt environmentally friendly (literally “favorable”) measures;

This concept provides that local governments should take the lead in assuring the quality of the environment in their jurisdictions. The primary mechanism for carrying out this responsibility is through application of the law, and the development of a regulatory system that not only infuses all decision-making with an environmental component, but also attempts to guide and change behaviors to provide for greater environmental protection.

2. Pollution prevention;

This principle holds that pollution should preferably be prevented before it is created instead of being controlled and treated after it is generated. Individuals and entities should be encouraged to change their behavior to become more engaged and protective of their environment. In addition to ensuring environmentally rational industrial and infrastructure plans, governments are encouraged to inject environmental considerations into social development plans as well. Research, education, monitoring, and public participation in environmental decision-making and enforcement should all be encouraged. This principle is embodied in China's laws protecting specific natural resources, and the “Clean Production Law” is a good example of the application of this principle to industrial production.

3. Liability of the polluter;

This proposition provides that it is the responsibility of the polluting entity to bear the responsibility for any cost of preventing pollution and paying for any damage that results from its operation and discharge of pollution.

4. Creation of a strong network of monitoring institutions.

This concept implies that national environmental goals and policies are communicated to and compliance commitments received from local governmental entities. The concept includes on-spot inspections of local companies by local EPBs. The subordinate governmental entity agrees to assume responsibility for the achievement of environmental targets, especially pollution load reduction goals. The national government (MEP) enters into agreements with provincial EPBs who in turn enter into agreements with local EPBs. When a new polluting facility develops or is significantly changed the operating entity must register the type and quantity of pollutants it discharges with the local environmental protection bureaus (EPBs). This information is used to determine applicable discharge fees, and establish monitoring obligations.

1.2 Categories of Laws & Regulations relevant in Environmental Governance

Laws and regulations relevant in environmental governance can be found into the following categories:

- ✓ Environmental protection related articles in the constitution;
- ✓ Environmental protection laws of P.R.C.;
- ✓ Environmental protection special laws;
- ✓ Local government administrative regulations and departmental rules for environmental protection;
- ✓ Environmental protection norms;
- ✓ Environmental laws and norms from other ministries;
- ✓ International conventions for environmental protection.

For the purpose of this report, current laws and regulation have been assessed successively in four chapters along the four core themes of the EGP i.e. (i) public access to environmental information, (ii) public participation/ consultation in environmental planning and decision making, (iii) access to justice in environmental matters, and (iv) proactive engagement of the private sector in sustainable practices (corporate environmental responsibility and economic instruments).

A detailed but nor exhaustive list of regulations assessed in this study and containing some information linked to public access to environmental information is shown in Annex 1. It contains some reference numbers to allow the easy cross-referencing of some tables presented in this report.

2. Review of Laws & Regulations Regarding “Public Access to Environmental Information”

2.1 Current Policies

In 2009, the Ministry of Environmental Protection (MEP) promoted the disclosure of government information by establishing a catalogue of information to be disclosed by governmental bodies in a document titled “*Working Rules to Disclose upon Application*”. The document compiles *Measures for the Information Disclosure of Public Enterprises and Institutions*. The content of voluntary disclosure by government information mainly includes 885 pieces of government information such as bulletins, decrees, standard specifications and appointments and removal of personnel as well as 4768 pieces of other environment information. According to this catalogue, information disclosed grew quantitatively by 960 pieces or 21 % in 2009 compared to 2008. Methods of disclosure of environment information are varied but mainly include Governmental websites at the central (MEP), provincial and local level (EPBs), public action in Newspapers such as the China Environment Daily and bulletins issued by MEP.

According to MEP, the Ministry received in 2009 at the central level from public parties the request for the publication of 72 pieces of environmental information, which may not be a large number considering the size of China and the multiplication of environmental difficulties encountered across the country. Figures for request of information by EPBs at the provincial and local level are in general similarly low. This is signaling some disconnection between the environmental information provided by governmental agencies and the demand for credible and comprehensive environmental information increasingly expected by the public.

The main reason for the observed disconnection may rest with the “Government exclusive” approach currently applied in environmental disclosure in China. The content, scope and method for disclosure of governmental environmental information by various level of Government may be becoming more abundant by the day. From a public perspective, it falls short of satisfying the interest of the public for accurate and trustworthy information about the environment quality of air, water bodies or else as experienced by the public in their daily lives nor the release of excessive pollution by economic operators and companies.

The main underlying regulations that contain text relevant regarding public access to environmental information include the following:

2.1.1 The Constitution of the PRC

The constitution law of P.R.C. includes some principles about the protection of citizens’ basic rights. The “Citizen’s right to know” is implied not explicit in the Constitution. All state organs and their civil servants according to Articles 27 and 41 must accept to be supervised by the people. This can be understood as a right of the people to know, to monitor the state organs and to have a say on the content and quality of the environmental information

disclosed by governmental organizations.

2.1.2 Environmental Protection Law

The Environmental Protection Law of the P.R.C. issued in 1989 stipulates in general provisions the principle of the “right to know” in terms similar to the Constitution. It stipulated in item 2 of Article 11 the obligation of the government to disclose bulletins on “environmental conditions”. In Article 31 any unit that, as a result of an accident or any other reasons has caused or threatens to cause an accident of pollution, must make the situation known to such units and inhabitants that are likely to be endangered by such hazards. The Law was a first effort to formally consider environmental information disclosure as an obligation of the government.

2.1.3 Legislation of the Environment Protection Law

The Law on *Environmental Impact Assessment* represents under the various basic environmental laws, the one which addresses best issues of public access to environmental information; this essentially in connection with the environmental impact assessment process. It is worth noting though that the EIA report doesn't fall into the scope of government information required to be disclosed voluntarily as set forth in the “*The Measures on Open Environmental Information (for Trial Implementation)*” (in short OEI Measures; see next paragraph). The project developer according to the EIA law shall only disclose an abridged version of the EIA report to the public affected which often fall short of providing enough information for a sound assessment of the project and its impact. The law on *the Promotion of Cleaner Production* explicitly stipulates that EPBs may publish the names of the enterprises whose emission of pollutants has surpassed the standards or whose total emission of pollutants has surpassed the prescribed limits.

2.1.4 Special Administrative Laws and Department Regulations

Two specific pieces of regulation are of importance regarding public access to environmental information. This is the “*Regulations of the PRC on Open Government Information*” (in short OGI Regulation) and “*The Measures on Open Environmental Information (for Trial Implementation)*” (in short OEI Measures). The OEI measures list 17 categories of information and data that EPBs should make publicly available on a voluntary basis (see [Annex 2](#)) and 10 categories of information that enterprises are encouraged to publish also on a voluntary basis. The Chapter III documents the methods and procedures for disclosures (see [Annex 3](#)). There is also a *Guide for Information Disclosure of the Ministry of Environmental Protection* which stipulates the scope and method for active disclosure of government information as well as the content to be disclosed upon application and more about monitoring methods and procedures for information disclosure by government bodies.

2.2 List of Significant Laws and Regulations with Articles

The table 2 lists the main articles from current significant laws and regulations that specifically address issues of “Public Access to Environmental Information”

Table 2: Key Laws and Articles Regulating “Public Access to Environmental Information”

Document Reference (Annex 1)	Laws & Regulations	Most Relevant Articles
3	Environmental Protection Law of the People's Republic of China(Issued on December 26th, 1989)	<p>Article 11: The competent departments of environmental protection administration under the State Council and governments of provinces, autonomous regions and municipalities directly under the Central Government shall regularly issue bulletins on environmental situations.</p> <p>Article 31: 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 that are likely to be endangered by such hazards, report the case to the competent department of environmental protection administration of the locality and the departments concerned and accept their investigation and decision.</p>
12	Regulations of the People's Republic of China on Open Government Information (issued on April 5, 2007)	<p>Article 6: Administrative agencies should disclose government information promptly and accurately. When administrative agencies discover false or incomplete information that affects or might affect social stability and disturbs the social management order, they should release, within their scope of responsibility, accurate government information to clarify the situation.</p> <p>Article 9: Administrative agencies should disclose on their own initiative government information that satisfies any one of the following basic criteria:</p> <ol style="list-style-type: none"> 1. Information that involves the vital interests of citizens, legal persons or other organizations; 2. Information that needs to be extensively known or participated in by the general public; 3. Information that shows the structure, function and working procedures of and other matters relating to the administrative agency; and 4. Other information that should be disclosed on the administrative agency’s own initiative according to laws, regulations and relevant state provisions. <p>Article 10: People’s governments at the county level and above and their departments should determine the concrete content of the government information to be disclosed on their own initiative within their scope of responsibility in accordance with</p>

Document Reference (Annex 1)	Laws & Regulations	Most Relevant Articles
		<p>the provisions of Article 9 of these Regulations, and emphasize disclosure of the following government information:</p> <ol style="list-style-type: none"> 1. Administrative regulations, rules, and regulatory documents; 2. Plans for national economic and social development, plans for specific projects, plans for regional development and related policies; 3. Statistical information on national economic and social development; 4. Reports on financial budgets and final accounts; 5. Items subject to an administrative fee and the legal basis and standards therefore; 6. Catalogues of the government's centralized procurement projects, their standards and their implementation; 7. Matters subject to administrative licensing and their legal bases, conditions, quantities, procedures and deadlines and catalogues of all the materials that need to be submitted when applying for the administrative licensing, and the handling thereof; 8. Information on the approval and implementation of major construction projects; 9. Policies and measures on such matters as poverty assistance, education, medical care, social security and job creation and their actual implementation; 10. Emergency plans for, early warning information concerning, and counter measures against sudden public events; 11. Information on the supervision and inspection of environmental protection, public health, safe production, food and drugs, and product quality. <p>Article 11: The government information to be emphasized for disclosure by the people's governments at the level of cities divided into districts and the county level people's governments and their departments should also include the following contents:</p> <ol style="list-style-type: none"> 1. Important and major matters in urban and rural construction and management; 2. Information on the construction of social and public interest institutions; 3. Information on land requisition or land appropriation, household demolition and resettlement, and the distribution and use of compensation or subsidy funds relating thereto; and 4. Information on the management, usage and distribution of social donations in funds and in kind for emergency and disaster relief, special care for families of martyrs and military service personnel, and assistance to poverty stricken and low income families. <p>Article 12: People's governments at the township (town) level should determine the concrete content of the government information to be disclosed on their own initiative within their</p>

Document Reference (Annex 1)	Laws & Regulations	Most Relevant Articles
		<p>scope of responsibility in accordance with the provisions of Article 9 of these Regulations, and emphasize disclosure of the following government information:</p> <ol style="list-style-type: none"> 1. Information on the implementation of rural work policies of the state; 2. Information on fiscal income and expenses and the management and use of various specialized funds; 3. Overall township (town) land use plans and information on the verification of land to be used by farmers for their primary residences; 4. Information on land requisition or land appropriation, household demolition and resettlement, and the distribution and use of compensation or subsidy funds therefore; 5. Information on township (town) credits and debts, fund raising and labor levies; 6. Information on the distribution of social donations in funds and in kind for emergency and disaster relief, special care for families of martyrs and military service personnel, and assistance to poverty stricken and low income families; 7. Information on contracting, leasing and auctioning of township and town collectively owned enterprises and other township and town economic entities; and 8. Information on implementation of the family planning policy <p>Article 13: In addition to government information disclosed by administrative organs on their own initiative provided for in Articles 9, 10, 11 and 12, citizens, legal persons or other organizations may, based on the special needs of such matters as their own production, livelihood and scientific and technological research, also file requests with departments of the State Council, local people's governments at all levels and departments under local people's governments at the country and above to obtain relevant government information.</p>
16	<p>Law of the People's Republic of China on the Prevention and Control of Water Pollution(Issued on January 1st, 1984, Final Revised on February 28th, 2008)</p>	<p>Article 19: The administrative department of environmental protection under the State Council shall publish the provinces, autonomous regions and municipalities directly under the Central Government that fail to reach their indicators on reduction and control of total discharge of important water pollutants. The administrative department of environmental protection of the people's government of each province, autonomous region, or municipality directly under the Central Government shall publish each city or county that fails to reach its indicators on reduction and control of total discharge of important water pollutants.</p> <p>Article 25: The state shall set up a water environment quality and water pollutant discharge monitoring system. The administrative department of environmental protection under the</p>

Document Reference (Annex 1)	Laws & Regulations	Most Relevant Articles
		<p>State Council shall be in charge of working out water environment monitoring norms, releasing information about the state's water environment in a unified way and organize monitoring network with the competent department of water administration under the State Council.</p>
28	<p>Law of the People's Republic of China on the Prevention and Control of Atmospheric Pollution (Issued on April 29th, 2000)</p>	<p>Article 20: Any unit that, as a result of an accident or any other exigency, discharges or leaks toxic or harmful gases or radioactive substances, thereby causing or threatening to cause an accident of atmospheric pollution and jeopardize human health, must promptly take emergency measures to prevent and control the atmospheric pollution hazards, make the situation known to such units and inhabitants as are likely to be endangered by the atmospheric pollution hazards, report the situation to the local administrative department of environmental protection and accept its investigation and settlement. Under the emergency of a severe atmospheric pollution that may jeopardize human health and safety, the local people's government shall announce the situation to the local residents without delay and take compulsory emergency measures, including ordering the pollutant discharging units concerned to stop the discharge of pollutants.</p> <p>Article 23: The administrative department of environmental protection under the people's governments of large and medium-sized cities shall regularly publish reports on the quality of the atmospheric environment and gradually introduce the system of forecasting the quality of atmospheric environment. A report on the quality of the atmospheric environment shall include such contents as the characteristics of urban atmospheric pollution, the types of major pollutants and the extent of harm caused by the pollution.</p>
43	<p>Notice on Issuing the Temporary Act of Environmental Impact Assessment of Public Participation (February 14, 2006)</p>	<p>Article 7: According to this act, the construction organization or its commissioned agencies for environmental impact assessment and environmental protection administrative departments shall open environmental impact assessment information to the public using the methods that facilitate the public to get environment related information.</p>
45	<p>Measures for the Disclosure of Environmental Information (for Trial Implementation) (Issued on</p>	<p>Article 5: The citizens, juridical persons and other organizations can submission an application to the environmental protection departments for the opening of government environmental information.</p> <p>Article 13: The environmental protection departments shall initiatively open government environmental information using the</p>

Document Reference (Annex 1)	Laws & Regulations	Most Relevant Articles
	April 11th, 2007)	<p>methods, such as government websites, bulletins, press conferences and newspaper, radio, television and other means, which are facilitate the public to get environment related information.</p> <p>Article 15: The environmental protection departments shall compile and publish government environmental information opening guides and directories for government environmental information opening, and update the related information in time.</p>
49	<p>The competent administrative departments of environmental protection of public affairs management approach (Issued on April 1st, 2003)</p>	<p>Article 5 In addition to state secrets, national security and social stability issues, the contents belongs to administrative affairs of environmental protection department, which are concerned by the society, public, enterprises and institution in general, should open to the public according to its administrative rights and stipulated censor process.</p> <p>Article 6 According to the local conditions, environmental protection departments of all levels, can open environment administrative affair related information, using the methods such as meetings, newspapers, radio, television, convenient manual, electronic touch-screen, internet, and governmental affairs opening columns.</p> <p>Article 10 For other matters that the public required to be opened, the related departments should give out its opinions and report to governmental affairs leadership to be audit. The content that can be opened to the public should inform the related parties concerned.</p>
64	<p>Law of the People's Republic of China on Promoting Clean Production(Issued on June 29, 2002)</p>	<p>Article 6: The state encourages the scientific research, technological development and international cooperation concerning clean production, organizes the publicity and popularization of knowledge about clean production, and promotes the application of the technologies for clean production.</p> <p>The state encourages social bodies and the general public to participate in the publicity, education, promotion, implementation and supervision of clean production.</p> <p>Article 17: The administrative departments of environmental protection of the provinces, autonomous regions and municipalities directly under the Central Government shall lay emphasis on the supervision of the implementation of clean production. They may, according to the demand of promoting clean production and according to the emission of pollutants by the enterprises, publish the names of the enterprises whose emission of pollutants has surpassed the standards or whose total emission of pollutants has surpassed the prescribed limits in the major mass media of the local places so as to provide a basis for the general public to supervise the implementation of clean production by the enterprises.</p> <p>Article 31: The enterprises which have been included in the list of seriously polluting enterprises shall, according to the</p>

Document Reference (Annex 1)	Laws & Regulations	Most Relevant Articles
		provisions of Article 17 of the present law, publish their emission of major pollutants according to the provisions of the administrative department of environmental protection of the State Council and accept the supervision of the general public.

2.3 Difficulties in Implementing Laws and Regulations on Information Public Disclosure

The two most important pieces of legislation of importance regarding public access to information is the OGI and OEI highlighted earlier. However, the practical disclosure of environmental information so far, although improving and increasing every year fall short of satisfying the pent-up demand of the public for accurate and comprehensive information on environmental quality and pollution release by enterprises. Main issues include:

2.3.1 Vague responsibility for disclosure of environment information by government authority

The Article 6 and item 2 of Article 11 of the *Environmental Protection Law of the PRC* only mention the right of the people to report or file charges against an administration. It doesn't specify the "Right to know" of the people nor the right to have access to (environmental) information. Nor does the law specifies what practical remedial steps a person can undertaken if a request for information from the authorities remain unanswered.

The OGI Regulation stipulates the obligation of the public authorities detaining environmental information (essentially the EPBs) to make it available to the public. The OEI Measures specify 17 groups of information to be made available to the public (see Annex 2). Practically this duty by EPBs is very unevenly fulfilled across the country especially for the information that is of most interest to the public (environmental quality surrounding one living space and the pollution released by polluters. Most critical and useful data for the public like the name and the pollution released by companies exceeding their discharge permits are very poorly or not at all reported.

The OEI Measures mentions 10 groups of information to be made available to the public by Enterprises (see Annex 2). However this is to be done by the enterprises on a voluntary basis. As shown in an evaluation of the local compliance regarding the OEI Measures by the organization ARTICLE 19 plus CLAPV¹ this is done very marginally by companies essentially because of the voluntary requirement.

¹ Study "Access to Environmental Information in China: Evaluation of Local Compliance", December 2010 by ARTICLE 19 & CLAPV

2.3.2 Unclear rules for the disclosure of environment information by enterprises

As shown in the survey from ARTICLE 19 and CLAPV mentioned above, disclosure of information about polluting enterprises as requested under the categories 6, 13 and 14 of the list of information to be disclosed by EPBs as per article 11 of OEI measures categories is not really implemented at the local level. EPBs tend to protect enterprises many of them being anyway State Owned Companies (SOE).

The OGI Regulation and OEI Measures are incomplete and imprecise regarding pollution released by enterprises. Disclosure of information encouraged by the OEI Measures for enterprises are phrased in general terms and do not require the documentation of each released pollutants from production processes, products and by products. Secondly, the regulation lacks specific rules regarding the interaction with the public and processes and methods regarding public participation. Thirdly the responsibility for disclosure is one sided and penalties in case of violation of permitted discharge is too weak to spur compliance.

Regarding the environmental impacts of products, some attempts were made to develop green and environmental labels for various types of products. However rules and procedures for examination and awards of these labels are unclear and often not transparent to the public.

2.3.3 Unilateral power to interpret laws by administration.

Regulatory environment information disclosure in China rests by the environmental authorities, which is also in principle the approach taken by most developed countries. However, due to vague wording of the relevant regulation, government authorities have excessive power to interpret the disclosure requirement to their own interest and advantage (of restrained disclosure). Rules that may be creating opportunity for the refusal of disclosure of information by authorities include among others: (i) “ *official information released should not cause social instability and threaten the safety of the state, the public and the economy*”; (ii) “ *the government should steer clear of releasing state secrets, confidential commercial information and infringing on an individual's privacy*”; (iii) “ *confidential business information and private information of individuals contained in government databases should not be released without the consent of the person concerned* ” ; (iv) “ *Individuals who believe their interests have been harmed by the release of confidential information can sue for compensation*” .

2.3.4 Weak pollution control and monitoring legislation.

Relevant regulations about pollution control and environmental quality monitoring are essentially limited to the *Provisions on the Management of Environment Monitoring* issued in 1983 and the *Provisions on Environmental Monitoring and Quality Control* issued in 2006 by MEP. The former did not mention any specific responsibility and duty nor procedures for pollution control and environmental quality monitoring by competent authorities. The latter

does contain some add-on clauses about penalties in case of pollution release above permitted discharge. It remains however weak regarding the permitting and pollution control inspection process and environmental media quality monitoring and reporting of enterprises. In many cases the EPBs inspectors in charge of pollution control monitoring, do not have practical access to an accurate picture of the pollution released by operating companies. The permit mentions only a total permissible total quantity of pollution to be released over time by the operator and pollutants monitoring data often rest the exclusive propriety of the operator.

2.4 Lessons Learned and Opportunity for Improvement of Laws and Regulations

2.4.1 Enlarging the public right to know about environmental matters

Public access to environmental information is essentially understood in China as information disclosure by government authorities. There is no explicit right to know of the public regarding environmental information. Such approach is not well aligned with international development trend of public environmental access to information observed in developed countries. The information disclosure as practiced in China is also mostly limited to selective parties that are assumed to have a direct environmental interest (risk of pollution damage) that justify their access to environmental information. There is no as yet a recognized public interest right to know about environmental information. The public right to know may need to be expanded to include any natural person, legal person, public interest groups as well as governmental administration.

2.4.2 Strengthening obligation to report environmental information by enterprises.

Most environmental difficulties stem from (i) the emission released by enterprises into the environment as well as (ii) the exploitation of natural resources. Currently the enterprises have no legal obligation to report thoroughly and accurately natural resources use nor emission release into the environment. Voluntary reporting of pollution release by enterprises as currently applied in China, doesn't work in practice in any country of the world because of the inherent conflict of interest of doing so by director of enterprises. What may be necessary is to strengthen the mandatory requirement for the thorough and detailed reporting of natural resources use and emissions to environmental authorities. Such requirement and its periodic control by inspectors to ensure accuracy and fair representativity of reality of reported data by enterprises could be included in details in the permit to operate issued by the environmental authorities together with the notice that pollution released beyond permitted and agreed discharge standard concentration and total quantity will have to be made available to the public by the environmental authorities.

2.4.3 Expanding the scope and depth of environment information disclosed

The exact nature, scope and intensity of environment information to be made publicly available in China are poorly defined and specified. It covers essentially general environment state bulletin, overall report on regional or basin level environment condition, air environment condition weekly (daily) and to a lesser extent reports about enterprise environment information as voluntarily disclosed by enterprises. Source of monitored data, data published and their accuracy and quality assurance are not well defined nor documented making the data often mistrusted by the public. This may require a more precise and robust environmental monitoring data framework and more detailed and environmental media specific procedures for data acquisition, data analysis, data compiling and data quality assurance especially for published environmental data.

2.4.4 Strengthening the right to know of environment information

Access to environmental information especially for environmental pollution released by enterprises is often limited to parties who may have an immediate risk of pollution damage impact. There may be a need to open access to information to public interest groups who have not direct environmental stake in specific environmental data. Their participation in environmental debates based on trustful and complete publicly available environmental data may help facilitate enforcement. The environmental protection departments may also be encouraged to provide support to victims of environmental pollution, by providing them with environmentally relevant data and pollution emission and control data from enterprises.

2.4.5 Improving the legal liability of failing to inform.

In case of incident, accident or emergency situation, enterprises have the obligation to disclose swiftly to the environmental authority information about the pollution released; this is to allow the concerned population at risk to be protected. However the legislation and rules defining what need to be disclosed, when, to whom and how is vague and weakly defined, making the obligation of information disclosure a poorly effective tool. Future improved regulation and rules may need to stipulate more clearly and precisely the environment information that an enterprise shall make available to the environmental authorities as well as to the public as soon as it start to operate, during routine operation, and in case of incident, accident or emergency situation. The regulation may then need to clarify the liability of the enterprise in case of damage to goods or persons due to non, inaccurate or delayed disclosure.

The liability may also need to be extended in terms of administrative sanctions to environmental authorities which have a legal duty and may fail to pass on timely, accurately and completely to the public environmental information about enterprises operation and their pollution release.

2.4.6 Improve relief mechanisms for non respect of legal information disclosure requirement.

A first step could be to strengthen the complaints supervision system by the environmental authorities to monitor complaints of non disclosure of information by either the authorities or the enterprises and track the handling of responses made. The system would preferably include well defined rules and procedures about the information to be returned to complaining parties, clearly specified response time limits and administrative sanctions in case of wrongdoing capable to act as deterrent. The system would also preferably include some reconsideration clauses that allow complaining parties to seek reconsideration by the authorities or higher authorities when information disclosed in response to a request for information is not satisfactory nor aligned with regulatory requirements. The system would preferably be an open and transparent process posted online on an adequately branded website for everyone including the public to see to help build the credibility and trust of the public in the environmental authorities.

As a second step, environmental public interest litigation in environmental case involving non disclosure of information or omission of information in disclosed information, even if no immediate environmental damage has been caused to anyone, could be allowed to strengthen the liability risks of non disclosure of legally required information for concerned parties.

3. Review of Laws & Regulations Regarding Public Participation/ Consultation in Environmental Planning and Decision Making

3.1 Relevant Aspects of Policies on Public Participation/ Consultation in Environmental Planning and Decision Making

The issue of public participation/ consultation in environmental matters and decision is weakly reflected in the current Chinese environmental legislation.

3.1.1 The Constitution

The Constitution doesn't have any article specifying clearly public participation in decision also not in environmental matters. The Article 2 stipulates only that *all powers in the People's Republic of China belong to the people. The people administer state affairs and manage economic, cultural and social affairs through various channels and in various ways in accordance with the law.* This only in principle entrusts the right of the citizens for wide participation in the management of public affairs management. The Article 41 by giving to the citizen the right to criticize and make suggestions regarding any state organ operation, in principle embed also the rights and obligations of public participation in environmental protection decision matters.

3.1.2 Environmental Protection Laws

According to the Article 6 of the Environmental Protection Law *"All units and individuals have the obligation to protect the environment and have the right to report on or file charges against units or individuals that cause pollution or damage the environment"* . This is however not directly a right to public participation in environmental decision but rather a reactive possibility of the public to influence decision after such decision has been made and implemented by relevant authorities. The law on EIA requires in Article 21 that during the course of the EIA report preparation, the project developer should *"seek the opinions of relevant entities, experts and the general public"* by holding a public hearing or by *"other means"*. Other means often involve soliciting opinion through mailed questionnaires or surveys. Not surprisingly many developers are relying on these (targeted) "other means" instead of public hearings to avoid confronting a wider public opinion.

3.1.3 Special Environment Protection Laws

Many special environmental laws do have stipulations confirming like in the basic environmental law that individuals have the obligation to protect the environment and the right to report on or file charges against units or individuals that cause pollution or damage to the environment. None however have clear Articles prescribing compulsory and open public consultation and participation. The law on the Promotion of Cleaner Production explicitly stipulated that the public has the right to supervise the situation of the enterprises

which releasing severe pollution beyond permitted standards.

3.1.4 Environmental Administrative Regulations and Department Regulations

In order to promote the public participation in environmental protection, China has formulated some administrative rules linked to public participation in environmental matters. The Article 7 of the Measures regarding the Issuance of Letters regarding the Environment for example stipulates that the environmental protection administrative department shall grant commendations and rewards to letter-writers or visitors for disclosing and impeaching the illegal behaviors of polluters which damage the ecology. The Temporary Act on Public Participation in the Environmental Impact Assessment stipulates specific clauses regarding public participation, organizers, organization forms as well as the responsibility of the competent administrative authority in relation to public participation in environmental decision.

3.2 List of significant Laws and Regulations with Articles

The table 2 lists the main articles from current significant laws and regulations regarding “Public participation and Consultation in Environmental Planning and Decision Making”

Table 2: Key Laws and Articles Regulating “Public Participation/ Consultation in Environmental Planning and Decision Making”

Document Reference (Annex 1)	Laws & Regulations	Most Relevant Articles
2	Constitution of the People's Republic of China (Issued on April 12, 1982; Final revised on March 14th, 2004)	<p>Article 2: All power in the People's Republic of China belongs to the people. The people administer state affairs and manage economic, cultural and social affairs through various channels and in various ways in accordance with the law.</p> <p>Article 27: All state organs and functionaries must rely on the support of the people, keep in close touch with them, hear their opinions and suggestions, accept their supervision and do their best to serve them.</p> <p>Article 41: Citizens of the People's Republic of China have the right to criticize and make suggestions regarding any state organ or functionary. Citizens have the right to make to relevant state organs complaints or charges against, or exposures of, any state organ or functionary for violation of the law or dereliction of duty; but fabrication or distortion of facts for purposes of libel or false incrimination is prohibited.</p>
3	Environmental Protection Law of the People's Republic of China (Issued on December 26, 1989)	<p>Article 6: All units and individuals shall 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.</p> <p>Article 8: The people's government shall give awards to units and individuals that have made outstanding achievements in</p>

Document Reference (Annex 1)	Laws & Regulations	Most Relevant Articles
		protecting and improving the environment.
16	Law of the People's Republic of China on the Prevention and Control of Water Pollution(Issued on November 1st, 1984; Final revised on February 28th, 2008)	Article 10: All entities and individuals have the obligation to protect water environment, and have the right to report to authorities acts polluting or damaging water environment.
28	Law of the People's Republic of China on the Prevention and Control of Atmospheric Pollution(Issued on April 29, 2000)	Article 5: All organizations and individuals shall have the obligation to protect the atmospheric environment and shall have the right to report on or file charges against organizations or individuals that cause pollution to the atmospheric environment.

Document Reference (Annex 1)	Laws & Regulations	Most Relevant Articles
41	Law of the People's Republic of China on Appraising of Environment Impacts(Issued on October 28th, 2002)	<p>Article 5: The state encourages relevant entities, experts and the general public to participate in the appraisal of the environmental impacts in appropriate ways.</p> <p>Article 11: In case a program may cause unfavorable environmental impacts or directly involve the environmental interests of the general public, the organ that works out the special programs shall, prior to submitting the draft of the programs for examination and approval, seek the opinions of the relevant entities, experts and the general public about the draft of the report about the environmental impacts by holding demonstration meetings or hearings or by any other means, except it is provided by the state that it shall be kept confidential. The drafting organ shall take the opinions of the relevant entities, experts and the general public about the draft report of environmental impacts into careful consideration, and shall attach a remark whether the opinions are adopted or refused to the report of environmental impacts to be submitted for examination and approval.</p> <p>Article 21: Unless it is provided by the state that it is necessary to keep confidential, for the construction projects which may impose significant environmental impacts and for which it is necessary to work out a report of environmental impacts, the construction entity shall, before submitting the construction project for examination and approval, seek the opinions of relevant entities, experts and the general public by holding demonstration meetings, hearings or by any other means. The report of environmental impacts submitted by the construction entity for examination and approval shall include an explanation of why the opinions of relevant entities, experts and the general public is accepted or rejected.</p>
42	Regulation on Environmental Impact Assessment of Planning (Issued on August 17th, 2009)	<p>Article 13: The department in charge of drawing up plans shall adopt the methods of questionnaire, forums, demonstration meetings and hearings to special plans that may cause adverse environmental impact and relate to public environmental interests directly, to solicit the comments and suggestions from the relevant units, specialists and the public on the report on environmental impact openly, except where secrets need to be guarded as required by laws. Where opinions of the relevant units, specialists and the public differs greatly from the conclusion of environmental impact assessment, The department in charge of drawing up plans shall adopt the methods of demonstration meetings and hearings for further demonstration. The department in charge of drawing up plans shall attach in the report on environment impact submitted for examination and approval the conditions for adoption and non-adoption of</p>

Document Reference (Annex 1)	Laws & Regulations	Most Relevant Articles
		public opinions as well as the instruction of the causes.
43	Notice on Issuing the Temporary Act of Environmental Impact Assessment of Public Participation (February 14, 2006)	<p>Article 5: The construction organization or its commissioned agencies should open environmental impact assessment information in the process of preparing environmental impact assessment report. The administrative department should open environmental impact assessment information in the process of approving or re-examining the environmental impact report, and solicit public opinions, but for the situation that stipulated in the national confidential laws are excepted.</p> <p>Article 12: After issuing information bulletin and opening brief environment impact assessment report, the construction organization or its commissioned agencies for environment impact assessment, should take public opinion surveys, consult expert advices, use the methods of seminars, hearings and other forms of public comments to solicit the opinions of the public.</p> <p>Article 33: According to the articles 8 and 11 of <i>the Law of the People's Republic of China on Appraising of Environment Impacts</i>, the organizations for special plan making related to industry, agriculture, animal husbandry, forestry, energy, water conservancy projects and transport, urban development, tourism and natural resources development which have the potential for environmental degradation, should hold the meetings, such as argumentation, hearing, or other forms, to solicit opinions from the related organizations, experts and the public on the draft environmental impact assessment report.</p>
49	Measures for the competent administrative departments of environmental protection of public affairs management (Issued on April 1st, 2003)	<p>Article 11: After issuing important information involving the vital interests of the public, the government should collect public views and responses and reasonable proposals should be adopted actively; problems reflected by the public should be studied in time. to the problems that can not be solved within a short period, the government should make a note to explain how to solve the problem.</p>
50	Interim Measures for Hearing the Administrative License in Respect of Environmental Protection (issued on June 23, 2004)	<p>Article 4: The environmental protection administrative department shall organize a hearing under the principles of openness, fairness and convenience for the people, fully hear opinions, and guarantee the rights of the party concerned to make statements, arguments and cross-examination. Except where the state secrets, trade secrets or private affairs are involved, the hearing shall be held openly. As for the hearing held openly, citizens, legal persons or other organizations may apply for presence at the hearing.</p>

Document Reference (Annex 1)	Laws & Regulations	Most Relevant Articles
		<p>Article 5: As for implementation of administrative license in respect of environmental protection, the Measure is applicable under either of the following circumstance:</p> <ol style="list-style-type: none"> 1. Where the hearing should be held as for the implementation of administrative license in respect of environmental protection by regulations of laws, codes and regulations; 2. As for the implementation of major administrative license in respect of environmental protection related to public interests, where the hearing is considered as necessary by the environmental protection administrative department; 3. As for administrative license in respect of environmental protection directly related to major interest relations between the applicant and others, where the hearing is required by the applicant and interested party by laws. <p>Article 6: Except where secrets need to be guarded, as required by State regulations, the unit of the construction project may not solicit the comments and suggestions from the relevant units, specialists and the public before submitting for examination and approval, the report on the environmental impact, or where major opinion difference may exist although the comments and suggestions from the relevant units, specialists and the public are solicited by laws, the environmental protection administrative department may hold the hearing before reviewing or re-reviewing environmental impact assessment documents of the construction project to solicit opinions from local units and residents in the project location:</p> <ol style="list-style-type: none"> 1. The construction project which may cause considerable impact on the environment and for which a written report on environmental impact is required to be prepared; 2. The construction project which may cause fume, odor, noise or other pollution and affect quality of living environment of residents in project location seriously. <p>Article 7: As for the special draft plans related to the development of industry, agriculture, animal husbandry, forestry, energy, water conservancy, transportation, urban construction, tourism and natural resources, which may cause adverse impact on the environment and may have a direct bearing on the rights and interests of the public in respect of the environment, local people's governments at or above the level of the city divided into districts shall, before submitting the draft of the plan for examination & approval and making a decision, designate the environmental protection administrative department to review the reports on environmental impact. The environmental protection administrative department may hold demonstration meetings or hearings, or solicit in other forms the comments and</p>

Document Reference (Annex 1)	Laws & Regulations	Most Relevant Articles
		suggestions from the relevant units, specialists and the public on the draft report on environmental impact, except where secrets need to be guarded as required by State regulations.
64	Law of the People's Republic of China on Promoting Clean Production (Issued on June 29th, 2002)	<p>Article 6 The state encourages the scientific research, technological development and international cooperation concerning clean production, organizes the publicity and popularization of knowledge about clean production, and promotes the application of the technologies for clean production.</p> <p>The state encourages social bodies and the general public to participate in the publicity, education, promotion, implementation and supervision of clean production.</p>
66	Regulations on the Administration of Construction Project Environmental Protection (Issued on November 29th, 1998)	<p>Article 15 The construction unit shall draw up the report on environmental impact and solicit the opinions from relevant units and residents in construction project location by regulations of relevant laws.</p>

3.3 Difficulties in Implementing Laws and Regulations

3.3.1 Regulations on public participation are few and vaguely worded

Regulations on environmental protection in China do not include systematic clauses on public consultation and participation as it is the case in more developed countries. Public consultation or participation in current environmental regulations is also essentially presented as principle but fail to be buttressed with practical and clearly worded implementation guidelines. Only *the Temporary Act of Environmental Impact Assessment of Public Participation* has specific clauses specifying methods and procedures for public participation.

3.3.2 Lack of incentive clauses related to public participation

Some environmental regulations in China do reward public individuals who contribute to environmental improvement, but the scope of these rewards is limited. In addition contribution to environmental improvement is different than public participation in environmental decision. Public participation in environmental decision in plans and projects

could in fact act as a serious incentive for individuals to be involved because they would then feel they have a say in the outcome of the plan or project and may take greater ownership toward environmentally sound implementation and outcome.

In case of litigation about environmental pollution and damage, individuals or non-governmental public interest groups may face serious constraints in terms of time, competence, energy in mobilizing legal counsels and money in dealing with administrative procedures and processes. Some financial support from the state to individuals fighting justified environmental pollution cases may be appropriate as an incentive to individual to act.

3.3.3 Limited form and scope of public participation

In environmental protection activities in China, the scope of public participation remains narrow and essentially limited to the Environmental Impact Assessment Law only which deals with project EIA. There is currently no regulation in China enabling public participation for the development of plans or strategies which may have significant environmental impacts. Experience in developed countries have shown that involving early the public and lay people in the assessment of plans and strategies that may have potential environmental impact helps design better plans and enhance the acceptability of these plans and their implementation by the concerned public.

3.3.4 Weak non-government organizations in environmental protection

In more developed countries, public spoke persons and community leaders in environmental matters tend to be based in environmental NGOs which have accumulated adequate awareness and understanding of environmental issues. In China public participation in environmental governance is mainly orchestrated by governmental organizations which are increasingly complaining of the poor awareness of the public of environmental issues and their implications. NGO participation is weak and not always tolerated nor fully accepted by governmental organization as serious social partners in the environmental discourse. Some have difficulty to registered in China as not-for-profit public interest group. Many have difficulty in getting access to funds for sustainable operation. Strengthening the capacity of responsible NGOs, simplifying their registration and facilitating their operation by enabling them greater access to public funds could help create the public spoke persons and community environmental leaders that governmental bodies want to have as discussion partners in their quest for environmental dialogues with the public.

3.3.5 Strong public crisis awareness coupled with weak participation

Many government organizations count activities such as tree planting, grass sowing or garbage collection in public places as good example of public participation. These activities

may indeed be good voluntary examples of public participation in environmental improvement, which can certainly contribute to public environmental awareness building objectives. They are but marginal expression of participation, and are not really examples of public participation in environmental decision. According to a recent Chinese survey only 6.3% of the public in China has participated in the environmental protection activities in the last three months. Less than 20 % of the population also knows the free informants' hot-line telephone line "12369" about environmental matters. Most people do not know how they can participate in environmental decision.

3.4 Lessons Learned and Opportunity for Improvement of Laws and Regulations

3.4.1 Strengthening the role of NGO in public participation

A first step could be the drafting of a comprehensive community organization or NGO law in China which is still lacking. Such a law would establish and clarify conditions, procedures and activity rules for various community organizations and NGOs. A second step could be then to strengthen in environmental laws the right of the citizens to establish or participate in NGO environmental organizations and to allow such NGOs to participate as social stakeholders in dialogue with government organizations about plans and projects with potential environmental impact. Such law could emphasize the importance for the NGOs to promote positive sustainable development and open the door for the involvement of NGOs in environmental decision-making, environmental supervision and environmental management beyond environmental awareness raising and education.

3.4.2 Improving the means for public participation

A first step could be here to establish clearly in China a system of public interest litigation in environmental matters. The establishment of environmental public interest litigation may help strengthen public participation in the legal system for environmental supervision and enforcement. A second step could be to strengthen and detail the implementation rules and procedures of public participation in ex-ante environmental decision for projects as well as for public plans and strategies that may have significant environmental impacts. This may include clear rules on the definition of the public concerned, the content of information to be disclosed to the public and the adequacy of time for review of these information by the public as a basis for a sound participation in the decision making process. Without involving the whole range of the public concerned and no timely access to detailed information about projects or plans seeking approval, no genuine dialogue nor sound recommendation can be made by the public. This may lead to inferior environmental decision, unsustainable solutions, poor public acceptance of projects or plans by the public and risk of rejection and disruption of social peace during implementation. This may also include clearer rules on how public concerns need to be addressed by governmental decision makers before decision is made and how government organization need to document how they have fairly integrated public comments and concerns in their approved projects or plans.

3.4.3 Means for realization of public participation system

A good approach could be the introduction of a clear public right to access to a healthy environment. This means the need for governmental authority to ensure that every individual can live in an environment adequate for his or her health and well-being. This right would also implies a right to participate in the decision of projects or plans which may impact on the health of the environment. This would place clear obligations on governmental organizations to ensure greater public participation in environmental decision-making and also enable easy and effective access to justice mechanisms if those rights are denied, thus enabling the public to challenge more general violations of environmental law.

4. Review of Laws & Regulations Regarding Access to Justice in Environmental Matters

Access to environmental justice in China is far from optimal. China has a four-level court system, including Basic Courts, Intermediate Courts, Provincial High Courts, and the Supreme People's Court. Experiments with "environmental courts" that are judicial bodies established for the adjudication of environmental protection cases appeared in China as early as the late 1980s. This is only since 2007 that "environmental courts" have started multiplying and experimenting with a variety of innovations in standing, jurisdiction, and remedies in environmental matters. At least three provinces (Guiyang, Jiangsu, Yunnan) have "environmental courts" that are dedicated to environmental matters. However there are presently no central level laws, regulations or policies explicitly governing environmental courts.

4.1 Relevant aspects of Policies Regarding Access to Justice in Environmental Matters

4.1.1 Tort liability of statutory environmental conditions

Civil liability for environmental pollution in China according to existing laws, has a number of rules that may hamper fair public access to environmental justice. It needs for example to be demonstrated by the claimant that pollution emission is the proven cause of environmental damages which may be difficult to prove without scientific assessment, instruments and expertise. Then a plaintiff needs to demonstrate that he personally suffered clearly proven environmental pollution damage. This again may require scientific capability, data and competence out of reach to many individuals and the public at large. Public interested litigation in which a third party not directly affected by a pollution event defends a "public interest" right to a healthy environment is not common practice in China. Although the State Council's "*Decision on the Implementation of Scientific Development and Strengthening of Environmental Protection*" specifically mentioned the "promotion of environmental public interest litigation" in 2005, the development of environmental public interest litigation has been slow to move into reality. It is just being explored in pilot "environmental courts" that have been created in a few provinces. Direct proven causation between pollution, damage and damaged claimant is often required as a general rule in environmental litigation cases in China. According to Article 41 of the Environmental Protection Law "*a unit that has caused an environmental pollution hazard shall have the obligation to eliminate it and make compensation to the unit or individual that suffered direct losses*". Article 65 of Tort Liability Law of the PRC stipulates also that "*with respect to any damage caused by environment pollution, the polluter shall bear tort liability*".

4.1.2 The statutory exemption case

Several laws in China do include conditions which absolve pollution discharging entities of liability. According to Article 153 of the *General Principles of the Civil Law of the PRC*, “Force Majeure” means unforeseeable, unavoidable and insurmountable conditions. According to current law practice in China, it mainly refers to natural disasters such as earthquake, war or tsunami. The Article 41 of the *Environmental Protection Law* and the Article 92 of the *Marine Environmental Protection Law* stipulate for example that polluters having caused pollution damages resulting solely from natural disasters which could not be averted through reasonable measures, shall be exempted from environmental liability. It also states that if the environmental pollution damage is found to be caused deliberately by the victim, the polluting party shall not bear the compensation liability. In case the pollution damage can be proved as caused by material fault of the victim, then the compensation liability for pollution emission may be mitigated between the parties. Finally if the damage can be attributed to the fault of a third party, the party having to support the compensation of the damage may claim the compensation back from the incriminated third party.

4.1.3 The principle of liability without fault

The liability of environmental pollution in China is based on the Principle of *Liability without Fault*. According to the Article 41 of the *Environmental Protection Law* and a reply by SEPA (now MEP) on issues of *Compensation liability for environmental pollution and damages*, environmental liability responsibility to compensate is independent of the fact that the polluter was or not at fault in causing a pollution release. Article 7 of the *Tort Liability Law of the PRC* specifies that “if any person infringes on other people’s civil rights and interests, and any legal provision specifies that he shall assume the tort liability, such provision shall govern, whether such person is at fault or not at fault.

4.1.4 The burden of proof

Due to the principle of negligent liability prevailing in most of civil lawsuits in China, the plaintiff is expected to bear the main burden of proof to support its cause. In Article 66 of the *Tort Liability Law of the PRC* the following rules apply. It specifies that *Environmental Civil Litigation* in China is based on the *Imputation Principle of Absolute Liability*. This means that the units with pollution emission shall in principle bear the burden of proof. The Article 2 of *Some Provisions of the Supreme People’s Court on Evidence in Civil Procedures (2001)* confirmed that *where any party cannot produce evidence or the evidences produced cannot support the facts on which the allegations are based, the party concerned that bears the burden of proof shall undertake unfavorable consequences*. How this burden of proof practically operates is not really clear nor unified.

4.1.5 Judicial relief of environmental damage

The approach taken in China for the relief of environmental damage mainly includes compensation for damages caused as well as remediation of the damage. The methods applied for environmental damage relief include out-of-court settlement, civil litigation, administrative mediation, administrative adjudication and administrative litigation. Article 134 of the *General Principles of the Civil Law of the PRC* specifies ten main methods of relief including among other mitigation of the damage caused, removal of obstacles to remediation, elimination of dangers, restoration of original condition and compensation for losses incurred. Compensation for environmental damages to organization and individuals are stipulated in item 1, of the Article 41 of the *Environmental Protection Law*. Article 41 of the *Marine Environmental Protection Law* has similar clauses.

4.1.6 Environmental damage assessment

In issues of environmental damage assessment and resulting compensation and dispute regarding the estimation of such pollution damages, a party may entrust environmental institute linked to the EPBs to provide monitoring data to support plaintiffs in their efforts to recover damages from pollution discharging entities. Article 89 in the *Law of the PRC on the Prevention and Control of Water Pollution* and Article 87 in *Law of the PRC on the Prevention and Control of Environmental Pollution by Solid Wastes* both have rules in this direction. They stipulate that in any dispute over damages and compensations due to the environmental pollution, a party concerned may entrust an environmental monitoring institution to provide the necessary monitoring data. The environmental monitoring institution is expected to accept to support the damaged party and faithfully provide monitoring data.

4.2 List of significant Laws and Regulations with Articles

The table 3 lists the main articles from current significant laws and regulations regarding “Access to Justice in Environmental Matters”

Table 3: Key Laws and Articles Regulating “Access to Justice in Environmental Matters “

Document Reference (Annex 1)	Laws & Regulations	Most Relevant Articles
3	Environmental Protection Law of the People's Republic of China(issued on December 26, 1989)	<p>Article 6: All units and individuals shall 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.</p> <p>Article 41: A unit that has caused an environmental pollution hazard shall have the obligation to eliminate it and make</p>

		<p>compensation to the unit or individual that suffered direct losses.</p> <p>A dispute over the liability to make compensation or the amount of compensation may, at the request of the parties, be settled by the competent department of environmental protection administration or another department invested by law with power to conduct environmental supervision and management. If a party refuses to accept the decision on the settlement, it may bring a suit before a people's court. The party may also directly bring a suit before the people's court.</p> <p>If environmental pollution losses result solely from irresistible natural disasters which cannot be averted even after the prompt adoption of reasonable measures, the party concerned shall be exempted from liability.</p> <p>Article 42: The limitation period for prosecution with respect to compensation for environmental pollution losses shall be three years, counted from the time when the party becomes aware of or should become aware of the pollution losses.</p>
11	Tort Law of the People's Republic of China(Issued on December 26th, 2009)	<p>Article 65: Where any damage is caused by environmental pollution, the polluter shall bear tortious liability.</p> <p>Article 66: In the event of a dispute over environmental pollution, the polluter shall bear the burden of proof regarding any exemption from or mitigation of liability and the causal relationship between his conduct and the damage.</p> <p>Article 67: Where there are two or more polluters, the proportion of damage for which each is liable shall be determined according to the type of pollutant, the volume of emissions, and other factors.</p> <p>Article 68: Where any damage is caused by environmental pollution attributable to a third party; the injured party may seek compensation from either the polluter or the third party. The polluter may, after paying compensation, claim back the damage compensation from that third party.</p>
16	Law of the People's Republic of China on the Prevention and Control of Water Pollution (Issued on May 11th, 1984; Final revised on June 1st, 2008)	<p>Article 85: The party whose rights and interests are damaged by a water pollution accident is entitled to ask the party discharging pollutants to eliminate the damage and make compensation for their losses. If the damage is caused by force majeure, the party discharging pollutants bears no liability for compensation, unless it is otherwise prescribed by law. If the damage is caused by the victim on purpose, the party discharging pollutants bears no liability for compensation. If the damage is caused by the gross negligence of the victim, the liability for compensation of the party discharging pollutants may be mitigated. If the damage is caused by a third party, the party discharging pollutants has the right to, after making compensation according to law, recover the compensation from</p>

		<p>the third party.</p> <p>Article 86: For a dispute over liability for damage or amount of compensation in a water pollution accident, the administrative department of environmental protection, the maritime governing authority or the administrative department of fishery may, according to the division of functions and duties among them and in light of the request of the parties concerned, settle it through mediation; if no agreement can be reached upon mediation, the parties concerned may file a lawsuit with the people's court. The parties concerned may also file a lawsuit with the people's court directly without going through the mediation procedure.</p> <p>Article 87: For an action of damage due to a water pollution accident, the party discharging pollutants shall assume the burden of proof for legally prescribed exemptions and the nonexistence of relation of cause and effect between its act and the harmful consequences thereof.</p> <p>Article 89: For any dispute over liability for damage or amount of compensation in water pollution, the parties concerned may entrust the environmental monitoring institution to provide the related monitoring data, and the institution shall accept such entrustment and truthfully provide the required monitoring data.</p>
28	<p>Law of the People's Republic of China on the Prevention and Control of Atmospheric Pollution (Issued on September 5th, 1987; Final revised on April 29th, 2000)</p>	<p>Article 61: An enterprise or institution which causes an atmospheric pollution accident through violation of this Law shall be fined less than fifty percent of the direct economic losses thus caused but not more than 500,000 Yuan to the maximum level. Fines shall be administered by the competent administrative department of environmental protection under the local people's government at or above the county level on the basis of the damages incurred. In serious circumstances, those in charge who are directly responsible and others who are directly responsible shall be subject to administrative sanctions according to law. Sanctions shall be administered by the unit to which they belong or by a higher competent authority. Should a serious atmospheric pollution accident occur that leads to any grave consequences of heavy public or private property losses or serious personal injuries or deaths, and if the act constitutes a crime, the criminal liability shall be investigated in accordance with the provisions of Article 338 the Criminal Law.</p> <p>Article 62 Any unit that has caused an atmospheric pollution hazard shall have the responsibility of removing the hazard and of making compensations to the units or individuals that have suffered direct losses.</p> <p>Any dispute over the liability to make compensations or the amount of compensation may, at the request of the parties, be settled by the administrative department of environmental protection; if a party refuses to accept the decision, it may bring a suit before a people's court. The party may also bring a suit</p>

		<p>before the people's court directly.</p> <p>Article 63 If atmospheric pollution losses result directly from uncontrollable natural disasters which cannot be averted even after reasonable measures have been promptly taken, the party concerned shall be exempted from any liability.</p>
33	<p>The People's Republic of China on the Prevention and Control of Environmental Pollution by Solid Waste(Issued on October 30th, 1995; Final revised on December 29th, 2004)</p>	<p>Article 83 Violates the provisions of this law, collecting, storing, utilizing and disposing hazardous waste, has caused a serious environmental pollution accident, which constitutes a crime, shall be investigated for criminal responsibility.</p> <p>Article 84 Units and individuals that have suffered damage caused by solid waste pollution shall have the right to claim compensation according to law. A dispute over liability for damage on the amount of compensation may, at the request of the parties, be mediated and settled by the competent administrative department of environmental protection on other supervisory and administrative department of prevention and control of environmental pollution by solid waste; if mediation proves unsuccessful, the parties may bring a suit before a People's Court. The parties may also directly bring a suit before a People's Court.</p> <p>Article 85 The cause environmental pollution by solid waste, it shall remove hazards, compensation according to law, and take measures to restore the environment undisturbed.</p> <p>Article 86 Caused by environmental pollution by solid waste by the damage compensation lawsuit, the disclaimer is barred prescribed by law and the behavior and damage due to the causal relationship does not exist between shall bear the burden of proof.</p> <p>Article 87 The harm of environmental pollution by solid wastes liability and the amount of compensation disputes, the parties may authorize environment monitoring institutions provide monitoring data. Environmental monitoring institutions shall accept entrustment, provide relevant monitoring data.</p>

4.3 Difficulties in Implementing Laws and Regulations

4.3.1 Insufficient legal protection of the environment

The environment is the common property of all citizens. It lacks a corresponding legal guarantee of protection in China. China legislation may provide a victim of an environmental infringement case with personal right and property right protection. The

protection of the environment for the sake of its ecological value is not provided in Chinese legislation. Article 26 of the *Constitution of the PRC* stipulates that *the state protects and improves the living environment and the ecological environment, and prevents and controls pollution and other public hazards*, which only implies a concept of environment right as an obligation of the states entities. However, current environmental protection law in China lacks specific regulations defining the citizen right to an healthy environment. The Article 6 of the *Environmental Protection Law* emphasizes the environmental obligation of the citizen to protect the environment but not the environment right to an healthy environment. The right is there limited to the right to report and the poorly defined right to file charges. In comparison with more developed countries, the protection of environmental right of the citizens to live in an environment adequate for his or her health and well-being, is much less developed in China.

4.3.2 Difficulty to prove causations in environmental litigation

The rules to prove causality between pollution release and damages caused lack specificity and coherent rules of application. According to current regulations in China, the Principle of liability without fault has led to an inversion of the burden of proof. This means that the burden of proof has been shifted from the party which suffered the damage (which had to prove that the suffered damage was caused by the pollution of the discharging entity) to the polluting entity which allegedly caused the damage. The polluters often as defendant have increasingly to disprove the connection between its acts and the damage claimed by the plaintiff. However, Chinese laws have not clearly specified any standards to prove the causality of environmental damage cases. Many cases remain in which the plaintiff still has to provide evidence that the damage suffered was due to the pollution of the defendant. As environmental pollution damage issues are often complex, it is often difficult for the plaintiff to demonstrate high standards of causality placing the plaintiff in a defavorable position.

4.3.3 Limited responsibility of environmental tort

The Chinese *Tort Law* contains a section on environmental pollution responsibility. It doesn't however define special types of torts. It simply confirms that the burden to disprove causation of the plaintiff damage rests with the pollution-discharging defendant. Damages compensations are limited to damages to property and person only. Indirect damages such as psychological damage to the victim or damage to the ecology are not considered. Punitive damages which can be a deterrent for polluters are not mentioned either in the *Tort Law* sections related to environmental pollution responsibility. Due to these limitations, current Tort Law in environmental matters has difficulty to protect fully the rights and interests of environmental pollution victims.

4.3.4 Short statute of limitations

The environmental law in China specifies a relatively short period for litigation. The Article 42 of the *Environmental Pollution Law* provides that the limitation period for the initiation of environmental damage claims is “three years” counted from the time when the party become aware of or should become aware of pollution damages. This is a relatively short time considering the slow emergence of some pollution impacts. The *Law on the Prevention and Control of Atmospheric Pollution* and the *Law on Prevention and Control of Water Pollution* also have time constraints clauses. They specify that if the party concerned is not satisfied with an administrative penalty, he/she can seek redress by the people’s court within 15 days from the day the penalty has been issued, which is a short period. In cases of litigation addressing faults made by environmental administrations, the *Administrative Procedure Law* states that indictment of an administration should be proposed within 3 months following the date of occurrence of the administrative wrongdoing. Fairer would be to start counting from the day the party concerned has actually been informed of the administrative (faulty) action or decision.

4.4 Opportunity for Improvement of Laws and Regulations

4.4.1 Establishing the right to an healthy environment as a fundamental right of citizens

A good way to enhance environmental justice in China could be to include in the *Constitution* and the *Environmental Protection Law* a citizen right to a healthy environment ensuring ensure that every individual can live in an environment adequate for his or her health and well-being. This could be then supplemented by procedural environmental rights such as the right of access to environmental information, the right to public participation in environmental planning and decision and the right of a victim to sue and claim for violation of the environmental right to a healthy environment.

4.4.2 Specifying criteria of environmental pollution infringement litigation

Under this heading, it may be desirable to specify more clearly how the causality between pollution and claimant damage need to be documented and evidenced in court. The current vagueness of the rules in this respect made it difficult for public victims to litigate successfully against powerful and well resources polluting companies without technical support that are often well beyond the means of an average citizen. In such approach, reliance on international experience such as primary-face proof, indirect inverse proof and circumstantial evidence for epidemiology, etc. may be useful guides.

4.4.3 Broadening liability responsibility under environmental torts

China may want to consider establishing special funds and an insurance system to compensate for environmental damages. This may be developed by strengthening the environmental liability rules and introduce the need for environmental liability insurance for company discharging pollution. Equally of importance national rules and methodologies for the scoping and estimation of damage and the calculation of compensation may deserve to be developed to encourage coherence and comparability of damage and compensation estimation applied across the country.

4.4.4 Extending the statute of limitations for environmental litigation

An avenue to be explored here could be to leave the time statute for environmental litigation undefined or significantly expanded to allow pollution cases which take long time to develop and show tangible impact (like in cases of ground water pollution) to still be addressed in the interest of the public environment.

4.4.5 Exploring linkages between environmental administration and judiciary

Under this heading, China may want to explore greater coordination between environmental administrative law enforcement and justice proceeding. Efforts could be devoted to improve communication and coordination between the environmental administrations and the public security organ, the people's procuratorate and the people's court. Joint methods could be explored to document environmental pollution assessment and procedures for treating pollution damage, compensation and related disputes. Another avenue for action could be the development of national regulation on environmental public interest litigation that would allow public interest groups (governmental or non-governmental entities) to pursue operators that discharge unlawful and unpermitted pollution into the environment.

5. Review of Laws & Regulations Regarding Proactive Engagement of the Private Sector in Sustainable Practices

The proactive engagement of the private sector in environmentally friendly behaviors in China involves essentially three types of instruments: (i) Corporate Environmental Responsibility, (ii) Voluntary Environmental Management Tools and (iii) Market-based Policy Instruments. In 2008, the number of CSR reports issued by China based enterprises reached 169, corresponding to around 5% of the CSR reports published globally. In 2009, the numbers reached 582 reports or 15 % of the globally published reports documenting a significant growth. In the year 2009 also, China had 71 types of eco-labels in a great variety of products ranging from automotive, building materials, textiles, electronics, daily chemical products, furniture and packaging products. By 2009, 2140 key enterprises have carried out the compulsory cleaner production audit requested according the *Cleaner Production Enhancement Law*. 1290 enterprises had finished the audit assessment and 1125 enterprises had passed the audit. Market-based Policy Instruments are among other currently linked in China to the Eco-compensation policy. Compensation projects being promoted by the government include large-scale ecological construction projects, new energy supply in rural areas, farmland protection and water resources use. The government is increasing noticeably investment in these areas.

5.1 Relevant aspects of Policies Regarding Proactive engagement of the private sector in sustainable practices

5.1.1 Corporate social responsibility

Enterprise responsibilities for the environment cover among others the need to implement cleaner production in the process of production and operation, make reasonable use of available resources and take adequate measures to prevent and deal with pollution. Company activities falling under CSR are those in which companies use their own core business resources and processes to develop products, processes and services resulting in improved environmental protection and social conditions. In Document No.1 (2008), the national State-owned Assets Supervision and Administration Commission (SASAC) specified that enterprises falling in certain categories should issue social responsibility report or sustainable development report regularly. It published *Guidelines for Central Enterprises on Performing Social Responsibilities* and *Standard Principles of Social Responsibilities for China Enterprises*. Guidelines for the publication of environmental information by companies listed in Shanghai Stock Exchange were also published by the Shanghai Stock Exchange in 2008. In 2010, the Ministry of Finance, the China Securities Regulatory Commission, the National Audit Office of the PRC, the China Banking Regulatory Commission and the China Insurance Regulatory Commission jointly issued the *Notification of supporting guidelines for printing and distributing internal control of enterprises (finance and accounting No.11, [2010])* . It included the *No.4 Application Guidelines for Enterprise Internal Control-Social Responsibility*.

Large enterprises are better equipped and resourced than medium & small enterprises in absolving their social responsibility duties. Large companies tend to have good awareness of enterprise environmental responsibilities and are willing to address them seriously. Medium and small companies have more difficulties with CSR. Few of them treat enterprise environmental responsibilities as part of enterprise management. A China entrepreneur survey carried out by 4600 entrepreneurs in 2007, showed that enterprises in the East of the country, large enterprises and state-owned companies, listed companies and profit-making enterprises pay more attention to environmental pollution issues. On the other hand medium & small enterprises in central-western regions with abundant coal and natural resources do extreme damage to the environment and private enterprises on the Eastern coast which are mostly are medium and small enterprises also cause serious coastal pollution problems in developed regions.

5.1.2 Voluntary environmental management instruments

Environmental Management System

ISO14000 series standards have been set up according to International economic and trade development needs which comply with the development of International environmental protection. As the most important and most basic standard in ISO14000 series, ISO14001 "Environmental Management Systems –norms and application guidance" standing in the perspective of the Government, the community and the purchaser, propose the common request for environmental management system (EMS) in order to effectively prevent and control pollution and improve resource and energy efficiency. ISO14001 is the basis for the establishment and implementation of Environmental Management System and the certification evaluation.

In order to improve the regional environment management and environment management effectiveness, establish environmental protection mechanism and ego tie mechanism, standard ISO14000 national demonstration zone of declaration, create, acceptance, approval, naming and follow-up management, "ISO14000 national demonstration zone management measures" are formulated. These measure is applied to the ISO14000 national demonstration zone, create acceptance, approval, declare, naming and follow-up management.

Requirements for the application of ISO14000 national demonstration zone

- (i) There are corresponding environmental management institute which is responsible for the establishment of environmental management system and implementation, and the institutes at all levels have clear responsibilities for environmental management;
- (ii) Environmental management system was established in accordance with ISO14001 standards, and obtained the certification and kept continued effective operation for more than 6 months;
- (iii) More than 15% industrial pollution enterprises within this region established an ISO14001 environment management system;

- (iv) According to the principle of whole process of management, measures and incentive policy were established. i.e. environmental management, pollution prevention, clean production, circular economy, energy saving, waste utilization, green procurement etc.;
- (v) Established the sudden production safety, natural disasters, environmental pollution accident emergency measures, training of staff training system, environment consciousness of relevant regional organizations and personnel rising generally and perceived involvement in the implementation of environmental management system.

Building principles for ISO14000 National Demonstration Zone

- (i) Principle of voluntary;
- (ii) Principle of demonstration;
- (iii) Principle of radiation; and
- (iv) Principle of innovation.

By the end of July of 2011, there are 32 ISO national demonstration zone, which have been the models to advocate ISO 14000 standards, had been built up.

5.1.3 Market Based Instruments

Certification system of products with environmental marks in China

China environmental labels scheme is a voluntarily certification system based on third party assessment. It provides a bridge between government, enterprises and consumers while helping improving the environment. It provides some guidance to consumers to choose green products and consume more sustainably. It also provides a way for enterprises and consumers to take part in environmental protection voluntarily. China environmental labels scheme include a comprehensive certification system, with strict standard and certification process. By the end of year 2010, China environmentally-label scheme consider six aspects in its issuance of labels including environmental performance, renewable use and recycling, regional environment quality improvement, environment quality improvement, human health protection and resources and energy saving. In 2006, the Chinese ministry of finance and SEPA (former MEP entity) jointly issued *Opinions on Implementation Guidance on Public Procurement Based on Environmentally Labeled Products*. The State Council in its *Circular for a Plan of Energy Efficiency and Pollutant Discharge Reduction* from 2007 further encouraged green public purchasing by governmental organizations by expanding the list of environmentally labeled products in governmental purchases. The Chinese environmental label scheme is an important tool used by the government to advance the state's circular economy strategy.

Environmental tax system

Taxes of the Chinese tax system that have environmental benefits include among others the resource consumption taxes, consumption taxes, urban construction taxes, taxes on vehicles and vessels and fixed assets investment taxes. Resources consumption taxes on coal, oil, natural gas and salt systematically charged. However their essential aim is to

adjust the income differential of the companies engaged in resource development and caused by different resources conditions and geographical location. Therefore they are not strictly speaking environmentally oriented taxes.

Financial incentives and ecological compensation schemes

Granting financial incentives to producers who protect the environment is an important way to promote sustainable development in China. Such incentives include tax refunds or rebates, special tax deduction and investment allowances, etc. Provinces like Liaoning, Shanxi, Zhejiang and others are experimenting with the definition of ecological services value and developing ecological environment compensation schemes for mineral development projects seriously affecting the natural ecology. Policy documents and experimental ecological compensation schemes for watershed ecological environment compensation has been issued in ten provinces including Jiangsu, Henan, Hebei, Hunan, Fujian, Shanxi, Shandong, Jiangxi, Hainan, Guangdong.

Green credit and environmental liability insurance system

Some environmental protection departments and bureaus have started linking non permitted pollution discharges to access to credit for enterprises. In some cases banks have started restricting or canceling access to loans and asked for early redemption of existing loans for enterprises which are heavy polluters. Implementation documents for green credit policy have been issued in more than 20 provinces. Hebei and Shanxi provinces have been particularly active in developing a green credit assessment system and launched evaluation of the effects of banks' green credit on the environmental performance of enterprises. Sichuan has issued green credit guidelines for the vanadium and titanium industry. Experimental works on environmental pollution liability insurance have been developed in ten provinces and municipalities including Shanghai, Chongqing, Liaoning, Yunnan, Guangdong, Hunan, Hubei, Jiangsu, Zhejiang and Sichuan.

5.2 List of significant Laws and Regulations with Articles

The table 4 lists the main articles from current significant laws and regulations regarding “Public participation and Consultation in Environmental Planning and Decision Making”

Document Reference (Annex 1)	Laws & Regulations	Most Relevant Articles
3	Environmental Protection Law of the People's Republic of China (Issued on December 26th, 1989)	<p>Article 6: All units and individuals shall 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.</p> <p>Article 14: The competent departments of environmental protection administration of the people's governments at or above the county level or other departments invested by law with power to conduct environmental supervision and management shall be empowered to make on-site inspections of units under their jurisdiction that discharge pollutants. The</p>

Document Reference (Annex 1)	Laws & Regulations	Most Relevant Articles
		<p>units being inspected shall truthfully report the situation to them and provide them with the necessary information. The inspecting authorities shall keep confidential the technological know-how and business secrets of the units inspected.</p> <p>Article 19: Measures must be taken to protect the ecological environment while natural resources are being developed or utilized.</p> <p>Article 24: Units that cause environmental pollution and other public hazards shall incorporate the work of environmental protection into their plans and establish a responsibility system for environmental protection, and must adopt effective measures to prevent and control the pollution and harms caused to the environment by waste gas, waste water, waste residues, dust, malodorous gases, radioactive substances, noise, vibration and electromagnetic radiation generated in the course of production, construction or other activities.</p> <p>Article 25: For the technological transformation of newly-built industrial enterprises and existing industrial enterprises, facilities and processes that effect a high rate of the utilization of resources and a low rate of the discharge of pollutants shall be used, along with economical and rational technology for the comprehensive utilization of waste materials and the treatment of pollutants.</p> <p>Article 28. Enterprises and institutions discharging pollutants in excess of the prescribed national or local discharge standards shall pay a fee for excessive discharge according to state provisions and shall assume responsibility for eliminating and controlling the pollution. The provisions of the Law on Prevention and Control of Water Pollution shall be complied with where they are applicable.</p> <p>The income derived from the fee levied for the excessive discharge of pollutants must be used for the prevention and control of pollution and shall not be appropriated for other purposes. The specific measures thereof shall be prescribed by the State Council.</p> <p>Article 31: 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 competent department of environmental protection administration of the locality and the departments concerned and accept their investigation and decision. Enterprises and institutions that are likely to cause severe pollution accidents shall adopt measures for effective prevention.</p>

Document Reference (Annex 1)	Laws & Regulations	Most Relevant Articles
		<p>Article 34: No unit shall be permitted to transfer a production facility that causes severe pollution for use by a unit that is unable to prevent and control pollution.</p> <p>Article 41: A unit that has caused an environmental pollution hazard shall have the obligation to eliminate it and make compensation to the unit or individual that suffered direct losses.</p> <p>A dispute over the liability to make compensation or the amount of compensation may, at the request of the parties, be settled by the competent department of environmental protection administration or another department invested by law with power to conduct environmental supervision and management. If a party refuses to accept the decision on the settlement, it may bring a suit before a people's court. The party may also directly bring a suit before the people's court.</p> <p>If environmental pollution losses result solely from irresistible natural disasters which cannot be averted even after the prompt adoption of reasonable measures, the party concerned shall be exempted from liability.</p>
116	Shenzhen Stock Exchange Social Responsibility Instructions to Listed Companies (Issued on September 25th, 2006)	<p>Article 27: Companies shall formulate environmental protection policies based on their impact on the environment. There shall be dedicated human resources in charge of the establishment, implementation, maintenance and improvement of their environmental protection system, and furnish necessary manpower, resources as well as technical and financial support to environmental protection.</p> <p>Article 28: Companies' environment protection policies normally cover the following areas:</p> <ol style="list-style-type: none"> 1) to comply with all the laws, regulations and rules that govern environmental protection; 2) to reduce resource consumption, including raw materials and fuels; 3) to reduce waste generation and make every effort to recover wastes for recycling; 4) to avoid, to the greatest extent, waste generation that pollute environment; 5) to apply environmental-friendly materials and energy-saving, waste-reducing design, technology and raw materials; 6) to minimize the adverse impact of corporate performance on environment; 7) to provide trainings to employees for the purpose of enhancing environmental protection awareness; and 8) to create an environment for sustainable development. <p>Article 29: Companies shall implement, as far as they can, facilities and processes that allow the greatest utilization of resources and lowest discharge of pollutants, as well as</p>

Document Reference (Annex 1)	Laws & Regulations	Most Relevant Articles
		<p>economical and rational technology for comprehensive utilization of wastes and pollutant treatment.</p> <p>Article 30: Companies shall report to and file with the competent authorities regarding pollutant discharge. In case the discharge exceeds the national or regional standards, Companies shall pay a fee in accordance with the State regulations and assume the responsibility for the elimination.</p> <p>Article 31: Companies shall allocate dedicated human resources for regular inspection of implementation of environmental protection policies. Behaviors in breach of environmental protection policies shall be rectified.</p>
45	<p>The Measures for the Disclosure of Environmental Information (for Trial Implementation)(Issued on April 11th, 2007)</p>	<p>Article 1: These Measures are formulated according to the Regulation of the People’s Republic of China on the Disclosure of Government Information, the Law of the People’s Republic of China on Promoting Clean Production, the Decision of the State Council on Fulfilling the Scientific Development View and Strengthening Environmental Protection and other relevant legal provisions for the purpose of promoting and regulating the disclosure of environmental information by environmental protection administrative departments (hereinafter referred to as environmental administrations) and enterprises, maintaining the rights and interests of citizens, legal persons and other organizations to access environmental information, and promoting the participation into environmental protection by the general public.</p> <p>Article 2: The expression “environmental information” as mentioned in these Measures includes government environmental information and enterprise environmental information. The expression “government environmental information” refers to the information which is produced or obtained by environmental administrations in their performance of environmental protection responsibilities, and is recorded and kept in a certain form. The expression “enterprise environmental information” refers to the information that is recorded and kept in a certain form, and is related to the environmental effects arising in the business activities of enterprises and the environmental acts of enterprises.</p> <p>Article 3: The State Environmental Protection Administration shall be responsible for promoting, guiding, coordinating and supervising the work on the disclosure of environmental information of the whole country. The environmental administrations of local people’s governments at or above the county level shall be responsible for organizing, coordinating and supervising the work on the</p>

Document Reference (Annex 1)	Laws & Regulations	Most Relevant Articles
		disclosure of environmental information of their respective administrative areas.

5.3 Difficulties in Implementing Laws and Regulations

5.3.1 Lack of interaction between enterprise-government-citizen

Implementation of enterprise environmental responsibility may be the responsibility of enterprises, but the government and the public have a role to play by rewarding good companies and punishing bad ones. However because of the current sustained tensions between enterprises, government and the public caused by numerous cases of unresolved pollution across the country, enterprises have a tendency to discount the value of CSR policy and action and implement it rather passively focusing on minimal governmental requirement that could impact on their capacity to operate.

5.3.2 Poor awareness of social responsibility in enterprises

Many companies interpret social responsibility as social functions of the enterprise as promoted by the government under social economy principles prevailing in China. Many companies also worry that tackling environmental and social responsibility will increase cost, reduce financial performance and turn them into loss making companies. Most enterprises practically have scant respect for environmental protection which they regard as an externality. Many are willing to make profits based on harming and polluting the environment. Many enterprises show little inclination to return to society part of the wealth they have accumulated although most of this wealth was essentially due to the preferential treatment they have enjoyed from the state.

5.3.3 Incomplete legislation and poor law enforcement

From the perspective of the state and governmental institutions, weak legislation, insufficient mandatory requirement and lax enforcement are the main reasons why enterprises fail to contribute to the buildup of social responsibility in China. Many government officials fail to realize that “voluntary environmental management instruments” can only lead to significant environmental improvement if the “command and control” side of environmental governance is already complied with. As long as environmental enforcement of environmental legal requirement are weakly enforced in China, there will be too little economic benefits for good performers to seriously embrace CSR policies and too many economic benefits for polluters to exploit the weaknesses of the state for their own

egoistic advantage.

5.3.4 Low environment protection impact of tax system

From a perspective of improving environmental protection, the contribution of the existing tax is not high. The setup and level of most taxes in terms of tax items, tax base and tax rates are not really set with environmental protection and sustainable development in mind. No taxes help reduce resources use efficiently. There is no tax incentives for pollution-free products and cleaner production methods. Current resources compensation fees main target is to balance development and utilization of land and mineral resources taking exclusively the economic value of the natural resources but ignoring the existence value of the resources from an environmental quality perspective or the ecological function value of the natural resources.

5.4 Lessons Learned and Opportunity for Improvement of Laws and Regulations

The prevailing reality in China is that the environmental responsibility of enterprises exclusively depends on laws and regulations and their command and control functions. Harnessing the forces of the market to encourage greater environmental behaviors of companies would first require that the command and control side of the environmental regulatory framework is thoroughly and fairly implemented and enforced. This would ensure a level playing field in which then proactive environmentally friendly companies could differentiate themselves from others with opportunity for economic gains without having to fear to lose our economically to uncontrolled polluters. In this perspective the following actions could be contemplated:

5.4.1 Embedding CSR in the laws

Possibility for action could be the inclusion of the environmental and social responsibility in the *General Corporation Law* and making sure through strengthened enforcement that companies thoroughly comply with the Labor Protection Law, the Production Safety Law and relevant Environmental Protection Laws.

5.4.2 Intensifying public information dissemination about CSR practices of enterprises.

This could be advanced by publishing and disseminating widely CSR reports of enterprises and encouraging greater public participation and evaluation of the CSR behaviors of companies including the rewarding of good CSR practices by the public and punishment of bad performed also by the public.

5.4.3 Strengthening green enterprise management

This could be promoted through the systematic & thorough examination of business operations in environmental and clean production or energy audits and making them mandatory for companies that fail to achieve sectoral environmental performance benchmarks

5.4.4 Establishing social responsibility assessment system for enterprises

Under this heading an enterprise social responsibility evaluation system, could be developed and tested to derive performance indicators that would take into account economic, social and environmental dimensions and that would encourage enterprises to improve technology, update equipment, and re-formulate production processes to save energy and resources consumption. The resulting system and indicators could be used widely for the attribution of awards, the setup of inspection frequency by environmental inspectors or the attribution of bank credit.

5.4.5 Establishing genuine environmental taxes

This could be advanced by the introduction of genuine environmental charges for resources extraction and consumption including water and the emission of pollution into the environment like for wastewater discharge or air pollution. This would help internalize the cost of natural resources consumption and emission pollution. This could be developed under the principle that any single milligram of natural resources used or pollution released into the environment even within the environmental extraction or discharge permit thresholds of companies, contribute to a deterioration of the environment and therefore deserve to be charged to compensate for the loss of environmental and ecological value. These charges could be started at a low level but be incrementally raised with time to correspond to the changing perception of the public of the environmental health value of their surroundings.

6. Case Studies

6.1 Case 1: The Legal Issues Arising from Songhua River Pollution Accident and its Countermeasures

6.1.1 Overview of Songhua River Pollution Accident

An explosion occurred on November 13, 2005 at an aniline workshop of double-benzene plant of CNPC Jilin Chemical within Jilin Province, which spewed 100 tons of benzene pollutants into the Songhua River. Although the environmental protection department discovered the following day that the water benzene exceeded the standard by 108 times, People's Government Office Department of Jilin Province & Environmental Protection Bureau of Jilin Province did not notify People's Government of Heilongjiang Province and Heilongjiang Environmental Protection Bureau of the pollution caused until November 18, 5

days after the explosion happened. On November 21, 3 days after the pollution notification, Government of Harbin issued two notices of water cut-off in a day with two completely different reasons. Firstly, they notified that in order to have an overall inspection on the municipal water supply network facilities, they would temporarily stop water supply. Then they claimed that due to the chemical explosion in Jilin Petrochemical Corporation, it is forecasted that the water may be polluted by the upper water, the municipal water supply network will stop water supply temporarily. There was only one piece of information common in both notices: There will be a 4 days of water cut-off. On November 23, the person in charge of the State Environmental Protection Bureau reported that Songhua River was seriously polluted due to the CNPC Jilin chemical explosion. The errors in terms of business management of the CNPC Jilin Petrochemical Corporation was pointed as main reason. People's Government of Heilongjiang Province informed the media of the pollution facts in the same day. Vice Governor of Jilin Province expressed "sympathy and deep apologies" to the people of Harbin. 10 days passed after the pollution occurred before the people along the Songhua River Basin and people were informed.

6.1.2 Environmental protection legislation weaknesses in China from the perspective of Songhua River pollution accident

The Songhua River pollution accident caused serious damage to the Songhua River basin highlighting four weaknesses of the current environmental protection legislation dealing with water pollution accidents.

(i) Disclosure of environment information

Laws and regulations on the right to know of environment in China are sparsely distributed in various legal documents. For example, Article 11 & Article 31 of *Environmental Protection Law* and *Law of the PRC on the Prevention and Control of Water Pollution* may not regulate the disclosure system of environment information definitely. Only Article 5 stipulates that *all units and individuals shall have the duty to protect the water environment and the right to supervise and inform against any pollution or damage to the water environment*. Such regulation may indirectly imply that the public has the right to know of environment. In addition, *On the Information Disclosure System of the Corporate Environment* issued in September 2003 by Ministry of Environmental Protection of the PRC has made principle regulations on the disclosure of environment information of the enterprise.

The disclosure system of environment information has not been really established in China. It has many weaknesses. Firstly, *Reporting Method of Unexpected Environmental Event Information of Environmental Protection Administrative Department (for trial implementation)* is just the department regulation with low effectiveness level and lack of law or regulation related to the disclosure system of environment information. Secondly, the content and guarantee measures for the disclosure system of environment information may be imperfect. For example, Article 11 of *Environmental Protection Law of the PRC* stipulates that *the competent departments of environmental protection administration under the State Council and governments of provinces, autonomous regions and municipalities directly under the Central Government shall regularly issue bulletins on environmental situations*. However, *Environmental Protection Law of the PRC* has not specified the scope of and procedure for government's disclosure of environment information as well as the legal

consequence that shall be undertaken in case of failure to fulfill the disclosure obligation in time. Thirdly, the scope of the subject that shall disclose the environment information is rather narrow. For example, *Environmental Protection Law of the PRC* issued in 1989 only stipulates that *the competent departments of environmental protection administration under the State Council and governments of provinces, autonomous regions and municipalities directly under the Central Government shall issue bulletins on environmental situations* while without regulations on the disclosure obligation of environment information of the environmental protection administrative department of municipal & county people's governments or the disclosure obligation of environment information of the enterprise. *Law of the PRC on Prevention and Control of Water Pollution* has no regulations on this aspect.

(ii) Civil compensation for environmental pollution

Songhua River pollution accident posted new challenges to civil compensation system of environmental pollution in China. First, the identification of environmental liability met a number of difficulties. Whether damage compensation liability caused by Songhua River pollution accident shall apply to *General Principles of the Civil Law of the PRC* or *Environmental Protection Law of the PRC* and *Law of the PRC on Prevention and Control of Water Pollution* is undoubtedly a hard question. Second, the damage caused by Songhua River pollution accidents is immeasurable. Jilin Petrochemical Corporation alone cannot bear such a large amount of compensation. Third, existing legislation has no regulations on compensation scope and calculation standards for compensation amount.

(iii) Emergency response system in environmental pollution accident

As for emergency system of environmental pollution accident, the regulations of *Environmental Protection Law of the PRC* issued in 1989 may have the following defects: Firstly, the above legislations only specify the obligation of pollution accident maker of reporting to the local environmental protection department but not the legal status of Ministry of Environmental Protection of the PRC and people's government in pollution accident area in the environmental accident emergency. Secondly, the above legislations aim to the pollution accident maker's non-fulfillment of reporting and non-adoption of emergency measures but without the corresponding clauses of legal liability. Thirdly, the above legislations may not specify the emergency measures that the pollution accident maker shall take after the pollution accident.

(iv) Criminal liability for water pollution

As for criminal liability caused by water pollution accident, *Law of the PRC on Prevention and Control of Water Pollution* and *Criminal Law* issued in 1997 in China have specific regulations. However, the clause of *Law of the PRC on Prevention and Control of Water Pollution* is invalid. However, *Criminal Law* in China has not stipulated special crime on water pollution. As for the behavior of CNPC Jilin Chemical, implement according to Article 338 of *Criminal Law* on *Crime on Major Environmental Pollution Accident*. Article 338 of *Criminal Law* has stipulated two circumstances for sentencing- *resulting in a heavy loss to public or personal property or personal injury and death* and *resulting in a heavy loss to public or personal property* without specific justice interpretations, thus to result in different standards for law enforcement of relevant justice organ, indefinite cognizance of being crime or not, which has violated the uniform principle.

6.1.3 Policy and suggestion

- **Improve disclosure of environment information**

Firstly, specify the legal status of the disclosure system of environment information and public right to environment information in *Environmental Protection Law of the PRC* and single act of *Environmental Protection Law*. Secondly, perfect the content of the disclosure system of environment information and draw up the corresponding guarantee measures. Specify the scope of and procedure for information that the government shall disclose as well as the legal consequence for non-disclosure of information in time. Thirdly, refer to foreign experience in legislation and draw up environmental information law.

- **Improve civil compensation liability system**

First, delete the regulations with the premise of violation of law for environmental pollution infringement in *General Principles of the Civil Law of the PRC*. Secondly, establish the system of damage compensation fund of environmental pollution to implement the practical damage compensation for environmental pollution. Thirdly, specify the calculation standard for compensation scope and amount in current laws to confirm the quantitative standard for cognition of the amount of pollution compensation for the justice organ.

- **Improve emergency response for environmental pollution accidents**

Firstly, as for pollution accident not in inter-region or inter-basin, *Environmental Protection Law of the PRC* and *Law of the PRC on Prevention and Control of Water Pollution* shall stipulate that the pollution accident maker should report to local environmental protection administrative department and local people's government when the pollution accident happens. Secondly, as for pollution accident in inter-region or inter basin, *Environmental Protection Law of the PRC* and *Law of the PRC on Prevention and Control of Water Pollution* shall stipulate that pollution accident maker should report to people's government and the environmental protection administrative department in pollution accident area as well as Ministry of Environmental Protection of the PRC. Thirdly, *Environmental Protection Law of the PRC* and *Law of the PRC on Prevention and Control of Water Pollution* shall stipulate that Ministry of Environmental Protection should have the responsibility for coordination during the handling of inter-basin pollution accident. Fourthly, establish the corresponding liability accountability mechanism and specify the legal liability that the pollution accident maker shall undertake in case of non-fulfillment of reporting and non-adoption of emergency measures in single act of environmental laws such as *Environmental Protection Law of the PRC* and *Law of the PRC on Prevention and Control of Water Pollution*. Fifthly, *Environmental Protection Law of the PRC* and *Law of the PRC on Prevention and Control of Water Pollution* may stipulate the specific category of emergency measures.

- **Improve criminal liability for water pollution**

Firstly, delete the regulation similar to Article 57 of *Law of the PRC on Prevention and Control of Water Pollution* to coordinate with the regulations in *Criminal Law* issued in 1997. Secondly, advice the Supreme People's Court to release justice interpretation as soon as

possible, thus to specifically define the indefinite clauses such as *heavy loss*, *great personal injury and death* and *heavy loss to public or personal property* stipulated in Article 338 of *Criminal Law*. Thirdly, it is recommended that the crime caused by water pollution should be separated from *major crime on environmental pollution accident* of *Criminal Law* to establish independent water pollution crime, thus to strengthen the sanction of crime behavior of water pollution.

6.2 Case 2: PX Project in Xiamen and Public Participation

6.2.1 Case Introduction

“PX Project in Xiamen Event” resulted from the PX chemical projects invested by Taiwan-funded enterprise-Tenglong Aromatic PX (Xiamen) Co. Ltd. The project was approved by the National Development and Reform Commission in February 2004. The project is located in the Haicang Taiwanese investment zone in Xiamen. This is a key project of Fujian Province to have foreign cooperation, with total expected investment reaching RMB 10.8 billion Yuan and the annual industrial output can reach 80 billion Yuan after the project is put into operation. In July 2005, the environmental impact report of this project was approved by State environmental protection Bureau.

After that, activities like land acquisition and resettlement and preparation for construction were quickly taken in Haicang Taiwanese investment zone in August 2006. The project center is 7 kilometers away from the Xiamen city center and Gulangyu National Scenic Area, 4 kilometers from Xiamen Foreign language school and Affiliated School of Beijing Normal University, Xiamen Haicang, which have about 5000 students. Within a radius of 5km area of the project, there are more than 10 million people living there in Haicang. The nearest Residential areas are less than 1.5 kilometers from the plant. Most areas of Jiulong River Estuary and the whole Xiamen Western Bay and 1/5 of the Xiamen Island are covered within a radius of 10km. The dedicated wharf for the project lies right in Xiamen Marine National Nature Reserve of rare species. Because the PX chemical project is too close to largely populated areas like residential areas and schools and colleges, the safety issue of this significant project became increasingly questioned by all parties.

6.2.2 Difficulties in Implementing Laws and Regulation

(i) Efforts of public participation in the event

PX Project in Xiamen embodies the features of public participation in contemporary China. First, local government usually does not disclose to the public the related information about the plans of construction projects based on the needs of economic development. The government completely replaced the public for public decision-making. Public opinion is not the main considerations of public policy; it is even ignored in many cases. Second, Legal procedures to assess similar environmental impact are always treated in a way like *buying a ticket after boarding*. People do not have a strong sense of procedures and even consider procedures obstacles to administrative decisions. Third, the government starts to pay special attention to public opinions after the public are strongly against certain program or construction projects. Public participation chances are given to the public only at that moment, however, the main intent is to let the public participate to dispel public dissatisfaction. Considerations of justice and procedure value of public participation are only secondary. The legal function of procedures cannot be well represented.

It took only one year and a half for PX Project in Xiamen to get project approval and evaluation approval. This high efficiency puzzled the public. However, with the appeal and efforts of Xiamen people, local government had no choice but to announce a temporary stop of the project construction and order a re-evaluation of the environmental impact

though the project was already approved by the state and was strongly supported by the local government. Public participation played a significant and important role in this event. It can be seen from the appeal of Xiamen people that city residents, living in Xiamen, which enjoys a large number of natural and cultural heritage, known as the “garden city”, have a strong sense of environmental protection. Xiamen residents invested a great deal of enthusiasm and attention to PX event, which had a great and profound impact.

(ii) Problems in public participation

(1) Public participation as reactive spontaneity

In the case of the PX Event, the public fully displayed a positive mentality and influenced the development of the event, giving a re-assessment chance to the project, which may have had large environmental risks. But the public participation in the PX event was only a spontaneous action brought about by the “proposal” of CPPCC Members and the play-up of the news media and networks. The public genuinely realized the importance to participate in environmental impact assessment and how important it was to be concerned about their living ground and living condition. It led to high public enthusiasm. However, public participation has not changed yet from spontaneous action to conscious action. The status of public participation is that many state agencies deny or resist public participation in government decision-making. People have not yet formed the concepts and practice of public participation in government decision-making, especially in environmental protection area. Most people think environmental protection is the business of the government and the business of the enterprise and has nothing to do with individuals.

(2) Effectiveness of public participation not specified in laws

Effectiveness of public participation refers to the recognition of public problems and opinions by environmental impact assessment institution. It may determine whether the public opinions should be considered as the reference or the basis for decision-making. However, *Law of the PRC on Environmental Impact Assessment* and *the Temporary Act of Environmental Impact Assessment of Public Participation* may not specify it definitely. Only Article 17 of *Temporary Act* stipulates that *the construction unit or entrusted environmental impact assessment institution shall consider the public opinions carefully and attach the instruction of adoption or non-adoption in the report on environmental impact assessment. The environmental protection administrative department may organize the advisory committee to discuss the instruction of adoption of public opinions in the report on environmental impact assessment, thus to judge the rationality and make suggestions for handling. The environmental protection administrative department shall consider the handling suggestions from advisory committee carefully in decision-making of examination and approval.* This remains obviously an unilateral regulation, which do not stipulated the need to address objection to the responsible institution that the public shall raise as for non-adoption of the opinions in final resolution or the right claim and relief method in case that the public may consider the behavior of the responsible institution as the violation of laws.

(3) Absence of system guarantee for public participation

Practical and effective implementation of public participation ought to be guaranteed by the

system. System guarantee of public participation includes organizational guarantee and information disclosure. Article 7 of *the Temporary Act of Environmental Impact Assessment of Public Participation* stipulates that *the construction unit or entrusted environmental impact assessment institution and the environmental protection administrative department shall adopt the method familiar to the public to disclose the information on environmental impact assessment according to the Method*. The public participation shall be organized by the construction unit or the entrusted environmental impact assessment institution. However, system regulations have not been established such as the principle, phase, subject, method and guarantee of public participation in information disclosure.

6.2.3 Lessons Learned and Opportunity for Improvement of Laws and Regulations

(i) Problems in public participation in environmental protection in China

(1) Influenced by traditional political and economic system

Although we have made great achievements in environmental protection activities, it is a pity that these achievements are mainly achieved by the government; the public did not do enough. Under the traditional economic and political system, Government monopolies the state affairs, including environmental affairs. Society lacks public space for public participation. Government did not make use of law and system factors to guide the public to participate in environmental affairs management collaborating with government. Procedure value and procedure justice is missing. It is *the heavy entity light procedure*. Without perfect procedure system, the public shows no interest to the state affairs, including environmental affairs. The public think it is the duty and responsibility of the government to protect the environment. Public participation is seriously restricted on condition that official participation system and procedure guarantee is not available. Up to now, the traditional economic and political system still prevents the perfection of public participation in environmental protection mechanism.

(2) Tool nature of public participation

Because of the inertia of traditional economic and political system, governments, especially local government tend to focus on economic development and disregard environment protection, ignoring public environments rights. Therefore, during the economic development and construction processes, government always considers public participation an obstacle to administrative process. Therefore, during administrative process, government operates in the dark and rejects the public participation in administrative decision-making. With the public awareness of environment protection, and the wider and deeper promotion of environmental participation, the public shows more and more interest in environmental protection participation, which in turn increased pressure on the government. In order to respond to people's participation enthusiasm, Governments begin to attach great importance to public participation. However, in order to guarantee the high efficiency of government administrative works, government will control the public participation process, especially the participation procedure to make certain the administrative targets are realized. Under government control, the public participation becomes distorted and the administrative tool of government. Its functions as guarantee of public environmental rights and procedure rights are crippled.

(3) Focusing on post-event participation and neglecting pre-event participation

Public participation in China mainly covers post-event supervisory involvement. The public seldom participates in pre-event decision-making and they seldom have supervisory involvement in decision execution. Take PX Project in Xiamen for example, this kind of environment project has a significant impact to local people. However, the government did not release related information to the public at the beginning and did not hold open hearings or expert panel discussion in a timely manner. Environmental impact assessment is only a procedure. The public face enormous obstacles to participate these construction projects, which are forced to “Interpolation of Procedure” under pressure from all occupations during the construction process. The public participation & procedure for environmental impact assessment starting from this moment has little substantial meaning.

(4) Insufficient system construction and procedures

From the perspective of public participation in environmental protection organizations, most public activities of environmental protection in China are supported, organized and launched by the government. Voluntary Public participation system has not yet been formed. In China, though we did have some laws and regulations about public participation, these are relatively principal regulations, which make the public participation system remain “paper work”. Procedure regulations in particular are mostly random regulations and therefore have no strong constraints on administrative organs and enterprises. Like PX Project in Xiamen, there was regulation of *Law of the PRC on Environmental Impact Assessment* at the beginning of operation, but procedure for environmental impact assessment did not become the restrictive system on the project, the procedure value has not been reflected.

(iii) Improvement of public participation in environmental impact assessment in China

(1) Strengthen public right awareness and education on environmental protection awareness

Carry out extensive education on right awareness and environmental protection awareness to make more citizens know the rights they can enjoy, which is protected by *Constitution of the PRC* and laws as well as specific environmental right to better contribute to the environmental protection career upon confirmation of their own rights.

(2) Define specific right, execution method of public participation as well as effectiveness of public participation. Specific rights that the public shall enjoy during the participation in environmental decision-making include right to know, participation right and claim relief right. Realization of the above public rights may require public participation upon confirmation of applicable method by legislation.

(3) Confirm the system guarantee for public participation

Realization of rights is guaranteed by the system. *Law of the PRC on Environmental Impact Assessment* and relevant laws & regulations have not established the system guarantee of public participation yet. Therefore, it is necessary to establish the system guarantee of public participation in laws.

6.3 Case 3: Compensation Dispute for Noise Pollution of Sujiahang Expressway Co., LTD

6.3.1 Case introduction and judgment abstract

(1) Introduction of case background

In 1999, Mr. Wu bought a house in Suzhou City, locating in room 101, No. 141 Donggang new village and obtained the ownership of the house in June 1999. SJHE located east to Mr. Wu's house operated on December 8, 2002. According to Mr. Wu, the plaintiff, when he just moved into his new house, the surroundings is very quiet. By early 2003, Sujiahang Expressway Co., LTD (SJHE) had operated. Within half a year, 40,000 vehicles goes by every day, 80% of them are overloaded cars. Over every two seconds, a car passes by his window, generating lots of automobile exhaust and high-decibel noise. The plaintiff has reflected the situation to the highway-commanding department several times with no response. On June 28, the plaintiff reported the situation to newspaper offices and municipal government at the same time. Municipal Environment Protection Bureau arranged inspection center to set up a monitoring point by his eastern window and got a result that the noise pollution reached a high-decibel level of 83, causing the plaintiff whole family sleepless all night. The plaintiff ages 62 and suffers from Coronary heart disease and neurasthenia and his wife suffers from occupational interstitial lung inflammation, emphysema and other disease. The plaintiff considers that the defendants violated their rights of privacy. The defendant is requested to address the highway noise pollution within a time limit, reducing the noise level of the plaintiff's residence to the standard.

(2) Judgment abstract

Because the monitoring data provided by the plaintiff has neither analysis nor stamps from the monitoring unit, the data did not meet the elements of evidence. With the exercise of the right of interpretation by the court, the plaintiff made application for forensic environmental noise evaluation. The court entrusts Environmental Science Institute of Jiangsu Province to do the noise pollution evaluation in the plaintiff's residence. However, because SJHE parallels with Donghuan Road, it is impossible to do environmental noise pollution evaluation unless to close one way temporarily. The court exercised the right of interpretation to the plaintiff once again and informed the plaintiff that he may apply for additional defendants. However, the plaintiff said he would not apply for additional defendants and was willing to bear the legal consequence of negative evidences, which fails the noise evaluation. Based on above facts, the court held that the plaintiff could not give conclusive evidence to prove the damage caused by SJHE noise pollution; it shall dismiss the plaintiff's claim.

6.3.2 Legal thinking on cases

(1) Distribution of burden of proof of the party concerned in environmental infringement litigation

We can see from the substance of the case decision, Judgment against the plaintiff is

mainly because he did not complete the burden of proof of damage caused. Burden of proof is also called responsibility proof, referring to who shall shoulder the responsibility to present evidence of the relevant facts. If the party bearing burden of proof cannot give conclusive evidence, it shall bear the adverse consequences of losing caused. Traditional tort theories take such principal as “The burden of proof lies upon him who affirms”; this is clearly unfair to those environmental tort victims of such special cases of infringement.

(2) Lack of entity right in civil relief of environmental infringement

The plaintiff of this case sued the defendants on the grounds of its violation of his right to privacy, although the court accepted the case, but frankly speaking, the right to privacy, as one of the concrete contents of environmental rights has not obtained legislative confirmation. Because of the ambiguity of the concept of environmental rights and the characteristics of a high degree of interest conflicts, traditional environmental rights theory has different opinions about the content and nature of environmental rights. Especially in judicial practices, environmental rights are always ignored because it is very difficult to define its every single element and lack in substantive law support and hard to operate.

(3) Imputation principle in civil relief of environmental infringement

The case belongs to damage compensation litigation caused by pollution of the environment. Since the plaintiff has not completed initial proof liability for damage fact, the case is terminated without involvement of defendant’s burden of proof. Imputation principle of infringement civil liability caused by pollution of the environment is *Principle of Liability without Fault*. Such view has been recognized by most of scholars in environmental law. However, from the current legislation and justice practices in China, the imputation principle of environmental infringement shall be considered as *dualism*: As for infringement of environmental pollution, adopt *Principle of Liability without Fault*. As for infringement of damages to environment, adopt *Principle of Liability for Fault Calculated* unless otherwise stipulated.

6.3.3. Policy suggestions

Suggestions on the constitution of civil relief system of environmental infringement in China

- ✓ Specify the environmental right in the legislation definitely to make it the basis for the environmental litigation of citizens
- ✓ Carry out segment regulations on inversion of burden of proof in civil litigation of environmental infringement
- ✓ Perform special legislation for environmental infringement
- ✓ Further improve the damage compensation system of environmental infringement
- ✓ Establish the social share mechanism of civil liability for environmental infringement and perfect the overall frame of civil relief system of environmental infringement

Annexes

Annex 1: List of Significant Laws and regulations regarding environment protection

Ref · No.	Laws & Regulations	Promulgation date	Final Revision Date	Related field
	I: The Constitution, Environmental Basic Act and related laws (National level)			
2	(1)Constitution of the People’s Republic of China	04/12/1982	14/03/2004	I II III
3	(2)The Environmental Protection Law of the People’s Republic of China	26/12/1989		I II IIIIV
4	(3)General Principles of the Civil Law of the People's Republic of China	12/04/1986		I II
5	(4)Legislative Instruments Act of the People’s republic of China	15/03/2000		I II
6	(5)Administrative Supervision Law of the Peoples Republic of China	17/09/2004		I II III
7	(6)Administrative Reconsideration Law of the Peoples Republic of China	24/12/1990	01/10/1999	I II III
8	(7)Administrative Licensing Law of the People's Republic of China	27/08/2003		I II III
9	(8)The Law of the People’s Republic of China on Administrative Punishments	17/03/1996		I II III
10	(9)Law of the People's Republic of China on State Compensation	12/05/1994	29/04/2010	III
11	(10)Tort Law of the People's Republic of China	26/12/2009		III
12	(11)Rule of Government Information Publicity	17/01/2007		III

13	(12)12th Five Year Plan for National Economic and Social Development	16/03/2011		
II: Laws and Regulations on Pollution Prevention				
1、 Water Pollution Prevention				
16	(1)Law of the People's Republic of China on the Prevention and Control of Water Pollution	01/06/2008		I II III
17	(2)Rules For Implementation of The Law of The Peoples Republic of China On The Prevention And Control of Water Pollution	20/03/2000		II III
19	(4)Marine Environmental Protection Law of the People's Republic of China	23/08/1982	25/12/1999	I II III
20	(5)Regulations of the People's Republic of China on Control Over-dumping of Wastes in the Ocean	06/03/1985		I II III
21	(6) Regulations of the People's Republic of China on the Control over Prevention of Pollution by Vessels in Sea Waters(1983-12-29)	09/09/2009		I II III
22	(7)Regulations on the Prevention of Pollution Damage to the Marine Environment by Land - based Pollutants	22/06/1990		I II III
23	(8)The Regulations Concerning the Prevention of Pollution of Sea Areas by Vessels	18/05/1988		I II III
24	(9)Regulation of environmental protection in the exploration and development of offshore petroleum	29/12/1983		I II III
25	(10)Regulations on preventing pollution by coastal engineering construction projects damage to marine environment management	25/06/1990	25/09/2007	I II III
26	(11)Interim Regulations for the Huai River Basin Water Pollution Control	08/08/1995		I II III
2、 Air Pollution Prevention				
28	(1)Law of the People's Republic of China on the Prevention and Control of Atmospheric Pollution (Apr. 2000)	05/09/1987	4/29/2000	I II III
30	(2)Measures on Supervision of Exhaust Pollution from Automobiles	15/08/1990	22/12/2010	I II III

31	(3)Law of the People's Republic of China on the Prevention and Control of Environmental Noise Pollution	29/10/1996		I II III
3、 Waste Pollution Prevention				
33	(1)Law of the People's Republic of China on the Prevention and Control of Environmental Pollution by Solid Waste	30/10/1995	29/12/2004	I II III
34	(2)Regulations on Medical Waste Management	06/16/2003		I III
4、 Nuclear and radiation pollution prevention				
36	(1)Law on the prevention of radioactive pollution of the people's republic of China	28/06/2003		I II III
37	(2)Radiation of radioactive isotopes and radial equipment protection regulations	24/10/1989		I III
38	(3)Regulations on Emergency Measures for Nuclear Accidents at Nuclear Power Plants	04/08/1993		I II III
39	(4)Regulations on nuclear materials management of the People's Republic of China	15/06/1987		I II III
5、 Environmental Impact Assessment				
41	(1)Law of the People's Republic of China on Evaluation of Environmental Effects	28/10/2002		I II III
42	(2)Regulations on Planning Environment Impact Assessment	17/08/2009		I II III
43	(3)Interim measures for public participation in Environmental impact assessment	14/02/2006		I II
6、 Environmental Information management				
45	(1)Environmental Information Disclosure for Trial Implementation	11/04/2007		I II IIIIV
46	(2)Catalogue of Ministry of Environmental Protection on the Disclosure of Information	30/04/2008		II
47	(3)Guidance of Ministry of Environmental Protection on the Disclosure of Information	07/05/2008		II

49	(4)Measures for the administration of public affairs for competent department of environmental protection administration	01/04/2003		II III
50	(5)Regulations on Environmental Protection Administrative Permission (for Trial Implementation)	23/06/2004		I II III
7、 Environmental Enforcement				
52	(1)Tentative Regulation on Punishment for Breaking Environmental Protection Law	20/02/2006		I II III
53	(2)Amendment to the Measures for the Administrative Penalties for Environmental Protection(2003)	06/08/1999	05/11/2003	I II III
54	(3)Interim Measures on Reporting Environmental Pollution and Damage Accidents	10/09/1987		I II III
55	(4)Notice On further enhancement of environment protection Verification And management System, in order to further strengthen The supervision after environment Protection Verification on Stock Companies	08/07/2010		I II
8、 Environmental Risk Precaution				
57	(1)Regulations on the Control over Safety of Dangerous Chemicals	02/03/2011		I II III
58	(2)Regulations on preventing pollution by Dangerous waste Chemicals	30/8/2005		I II III
59	(3)Provisions on the Environmental Administration of New Chemical substances	19/1/2010		I II III
60	(4)Measures for The Administration of Register on dangerous chemical	8/10/2002		I II III
61	(5)Provisions on the First Import of Chemicals and the Import and Export of Toxic Chemicals	16/03/1994		I II III
9、 Others				
63	(1)Circular Economy Promotion Law of the People's Republic of China	29/08/2008		I II III

64	(2)Law of the People's Republic of China on Promoting Clean Production	29/06/2009		I II III
65	(3)Interim measures for Cleaner production audits	26/08/2004		I II III
66	(4)Regulations on the Administration of Construction Project Environmental Protection	29/11/1998		I II III
67	(5)Provisions on the Management of Inspection and Acceptance of Completed Environmental Protection Facilities of Construction Projects	31/12/1994		I II III
68	(6)Regulations for National Survey of Pollution Sources	9/10/2007		III
69	(7)Regulations on the Nature Protection Regions of the People's Republic of China	02/09/1994		I II III
70	(8)The state council decision on implementing the scientific concept of development to strengthen environmental protection	03/12/2005		I II III
71	(9)Regulations on Environmental standard management	05/01/1999		II III
72	(10)Regulations on levying upon discharging fees management	02/01/2003		I II III
73	(11)Regulations on the Administration of National Environmental Monitoring	21/07/1983		I II III
74	(12)The National Plan for Environmental Protection	22/11/2007		I II
	III: Laws and Regulations on Resource Conservation			
	1、 Land resources protection			
77	(1)Regulations for the Implementation of the Land Administration Law of the People's Republic of China	28/08/2004		I II III
78	(2)Mineral Resources Law of the People's Republic of China	29/08/1996		I II III

79	(3)Sea Area Use Management Law of the People's Republic of China	27/10/2001		I II III
80	(4)Meteorology Law of the People's Republic of China	31/10/1999		I II III
2、 Agriculture and forestry protection				
82	(1)Agricultural law of People's Republic of China	02/07/1993	28/12/2008	I II
83	(2)The Fishery Law of the People's Republic of China	31/10/2000	27/08/2009	I II
84	(3)Regulations on basic farmland protection of the People's Republic of China	27/12/1998		I II III
85	(4)Regulations on Restoring Farmland to Forest	14/12/2002		I II III
86	(5)Forest Law of the People's Republic of China	20/09/1984	29/04/1998	I II III
87	(6)Grassland Law of the People's Republic of China	28/12/2008		I II III
88	(7)Law of the People's Republic of China on the Protection of Wild Life	28/08/2004	27/08/2009	I II
89	(8)Law of the People's Republic of China on Prevention and Control of Desertification	31/08/2001		I II III
90	(9)Regulations of the People's Republic of China on Wild Plants Protection	90/09/1996		I II
91	(10)Regulations of the People's Republic of China on	08/05/1997	29/11/2001	I II III
3、 Water resources protection				
93	(1)Water Law of the People's Republic of China	21/01/1998	29/08/2002	I II III
94	(2)Law of the People's Republic of China on Water and Soil Conservation	29/06/1991	25/12/2010	I II III

95	(3)Flood Control Law of the People's Republic of China	29/08/1997		I II III
4、 Energy protection				
97	(1)Energy Conservation Law of the People's Republic of China	01/11/2007	28/10/2007	I II III
98	(2)China Reusable Energy Bill	28/02/2005	26/12/2009	I II III
99	(3)China Coal Bill	29/08/1996	22/04/2011	I II III
5、 Tourism Resource Protection				
101	(1)Law of the People's Republic of China on the Protection of Cultural Relics	29/12/2007		I II III
102	(2)Scenic spots regulations of the People's Republic of China	06/09/2006		I II III
IV: Others Laws & Regulations				
104	(1)The standardization law of the people's republic of china	29/12/1988		I II III
105	(2)Highway Law of the People's Republic of China	28/08/2004		I II III
106	(3)Urban-rural Planning Law of people's republic of china	28/10/2007		I II III
107	(4)Construction Law of people's republic of china	01/11/1997		I II III
108	(5)Production Safety Law of the People's Republic of China	29/06/2002		I II IIIIV
109	(6)Law of the People's Republic of China of Industrial Enterprises Owned by the Whole People	13/04/1988		I II IIIIV
110	(7)Foreign Trade Law of The People's Republic of China	12/05/1994	06/04/2004	I II III

111	(8)The Company Law of The People's Republic of China	29/12/1993	27/10/2005	I II IIIIV
112	(9)Regulations of the People's Republic of China on Urban Collective ownership enterprises	09/09/1991		I II IIIIV
113	(10)Provisional Regulations of the People's Republic of China on Private Enterprises	25/06/1988		I II IIIIV
114	(11)Provisional Regulations of the People's Republic of China on Resource Tax	26/11/1993		I II
115	(12)Notice about "Guiding opinions for the state owned enterprises to implement corporate social responsibility"	29/12/2007		I IIIV
116	(13)Shenzhen Stock Exchange Social Responsibility Instructions to Listed Companies	25/09/2006		I IIIV

Annotations:

Significant Laws & Regulations Regarding:

I Public Access to Environmental Information

II Public Participation/ Consultation in Environmental Planning and Decision Making

III Access to Justice in Environmental Matters

IV Proactive Engagement of the Private Sector in Sustainable Practices

Annex 2: List of Groups of Environmental Information to be Disclosed by Public Enterprises and Institutions according to OEI Measures.

List of Proactive Information to be disclosed by EPBs according to Article 11 of OEI Measures:

1. Laws, regulations, rules, standards and other regulatory documents with respect to environmental protection;
2. Environmental protection plans;
3. Environmental quality status;
4. Environmental statistics and environmental investigation information;
5. Emergency response plans, early warning, occurrence and handling of emergency environmental incidents;
6. Allocation of total emission quota of major pollutants and its enforcement, issuance of pollutant emission permits and result of the comprehensive urban environmental improvement examination;
7. Type, volume and disposal of solid waste produced in medium to large cities;
8. Handling of environmental impact assessment (EIA) documents of construction projects, outcomes of the examination of these documents and results of environmental protection inspection upon completion of construction projects, as well as other items, basis, conditions, procedures and results relating to environmental protection administrative licensing;
9. Items, basis, standards and procedures regarding to the collection of pollutant emission fees, amount of pollutant emission fees payable by and actual amount imposed on polluters and information on exemption, reduction and postponement of fee payments;
10. Items, basis, standards and procedures of environmental protection administrative charges;
11. Letters and complaints from the public about environmental issues or industrial environmental pollution that have been verified and their outcomes;
12. Information on environmental administrative penalties, administrative reviews, administrative litigations and enforcement of administrative compulsory measures;
13. List of enterprises with severe pollution and whose pollutants emission exceeds the national or local emission standard or whose total pollutants emission exceeds the quota of total controlled emission determined by the local government;
14. List of enterprises that have incurred major or serious environmental pollution accidents or incidents, list of enterprises that have refused to enforce effective environmental administrative penalties;
15. Outcomes of the approval process of environmental protection setup;
16. Organisational structure, responsibilities and functions, and means of contact of environmental protection departments; and
17. Other environmental information that should be disclosed according to laws, regulations and rules.

List of Proactive Information to be disclosed on a voluntary basis by Enterprises according to Article 19 of OEI Measures:

1. Their environmental protection guidelines, annual environmental protection objectives and achievements;
2. Their total annual resources consumption;
3. Investment in environmental protection and environmental technology development;
4. Types, volume and content of pollutants discharged by them and where the pollutants are discharged into;
5. Information on the construction and operation of their environmental protection facilities;
6. Information on the handling and disposal of waste generated from their production, and on the recycling and overall use of waste products;
7. Voluntary agreement entered into with environmental protection departments on amending environmental behavior;
8. Their performance of social responsibilities;
9. For those enterprises that are listed by environmental protection departments as enterprises with severe pollution and whose pollutants emission exceeds the national or local emission standard or whose total emission of pollutants exceeds the quota of total controlled emission determined by the local government – that they disclose environmental information to the public, within 30 days after the name list is published, and disclose environmental information on local major media and file the information for record with the local environmental protection department, and
10. Other environmental information voluntarily disclosed.

Annex 3: Methods and Procedures for Environmental Disclosure according to Chapter III of OEI regulation.

Methods for environmental disclosure

All the environmental information to be disclosed is divided into initiative open government information and information disclosure in accordance with the application of open issues. And the forms of environmental information disclosure includes:

- (i) Government website for environmental protection;
- (ii) Administrative service hall;
- (iii) China environment news; and
- (iv) Other media.

Procedures for environmental disclosure

● The initiative open government information

- (i) Declare the open range of environment information;
- (ii) The environmental protection department initiatively open environment information according to the directory of environment information disclosure; and
- (iii) The applicant may read or refer to the related information in the government web site of environmental protection department.

● Information disclosure in accordance with the application of open issues

- (i) Submitting the written application. The applicant may submit a written application, and fill out the “application form for open information”. In case of difficultness in filling out the written application, the applicant can verbally present for disclosure of government information by the help of reception staff to fill out written form application;
- (ii) Processing of the application. After the application form for information disclosure being received, department of environmental protection will register and make the following reply within 15 working days counting from the registered date:
 - (1) Belonging to the scope of disclosure, the governor will inform the applicant can obtain the information in accordance with the relevant provisions in 10 working days and the ways to get the information;
 - (2) Belonging to the scope of exempted from disclosure, the governor will inform the applicant the reason why the environment information can not be opened;
 - (3) Not belonging to the working scope of environment protection department, the governor should inform the applicant which institute is in charge of the information and its contact methods;
 - (4) If the information applied for disclosure does not exist, the governor will inform the applicant; and
 - (5) If the application contents are not clear, the governor will inform the applicant to make changes, supplementary.

Monitoring methods and procedures

The citizen, legal person or other organization can appeal to the supervision department on condition that the organ fails to perform the obligation of government information disclosure. In addition, the citizens, legal persons or other organizations may also solve the problem by asking the supervisory authorities for help or by the legal way.