

## **Emerging Public and Corporate Roles in Addressing Water Pollution in China**

**Rebecca Nelson**

Lawyer, Blake Dawson Lawyers, 101 Collins St, Melbourne, VIC 3000, Australia  
Leader, Asialink Leaders Program, University of Melbourne, VIC, Australia  
rebecca.nelson@bdw.com

### **Abstract**

Despite China's comprehensive system of environmental laws and standards, poor water quality is widespread. This has significant detrimental effects on Chinese society, and causes serious economic losses, all of which make water pollution a major government concern. Much commentary has focussed on increasing the effectiveness of government enforcement of laws related to water pollution. This paper examines the current roles of the public and multinational corporations in encouraging compliance with such laws, both as individual sectors and in partnership. It suggests that although these roles are relatively new, they hold promise for supplementing government action in addressing water pollution in China.

### **Introduction: Water pollution in China**

China's most recent State water quality figures reveal that, of the water resources monitored at the national level in 2005, 59% of major rivers and 72% of lakes and reservoirs fall into or below the worst 2 of China's 5 water quality classes (OECD 2007; SEPA 2006). Rural industry, in particular, Township and Village Enterprises (TVEs), are a key cause of water pollution. Most TVEs are small and widely dispersed, lack resources to manage waste streams, are difficult to monitor, and have close ties to local government (Wang et al. 2008). Another important cause of water pollution in rural northern China is overuse of fertilisers and expanding agriculture (Webber et al. 2006). In cities, water quality is threatened by the discharge of untreated industrial effluent and sewage to waterways (Varis and Vakkilainen 2001). About half of China's 661 cities lack sewage treatment, and about 300 million people are without access to water that will not cause immediate health impacts (Klaver and Mulkey 2006-07).

Difficulties in ensuring compliance with China's myriad water-related laws—over 800 at the provincial level alone (Wouters et al. 2004)—constrain the ability of these laws to address water pollution. Commentary has tended to focus on problems surrounding direct government enforcement, such as scarce resources; local government protectionism; disregarding small but cumulatively serious, polluters; and favouring administrative penalties over criminal prosecutions (Moorman and Zhang 2006-07; Wang et al. in press; Chen 2005; Wang C. 2006-07a, 2006-07b; OECD 2006). This paper focuses on the role of the public and foreign businesses in influencing compliance with water quality laws. It examines how these sectors are individually encouraging increased compliance with these laws, and how they work in partnership to do so. It suggests that further encouragement of these sectors by the central government would usefully supplement direct enforcement, as well as benefiting these groups.

### **Water quality – a major concern for the Chinese government, public and business**

Despite their different interests, water quality is a major concern for the Chinese government, multinational business and joint ventures with foreign partners (**foreign businesses**), and the Chinese public. From the Chinese central government's perspective, water pollution threatens both economic prosperity and harmonious society; it may catalyse internal migration and reinforce social stratification by disproportionately affecting peasants, who may lack alternative, unpolluted water sources (Li 2007). These concerns are evident through China's main Five-Year Plans, which include major water quality measures (Chen 2005); a State Council Decision and 5-month anti-pollution enforcement campaign emphasising environmental protection in 2005 (Wang C. 2006-07b); and dedicated Five-Year Environment Plans (SEPA 2006). This emphasis is due in part to the economic significance of water pollution. Pan Yue, vice-minister of the China's national-level State Environmental Protection Administration (**SEPA**), has referred to water problems as "the bottleneck constraining economic growth in China" (Blumenauer 2004). SEPA estimated in 2006 that water pollution and total environmental pollution caused economic losses of about 1.7% and 3.05% of GDP, respectively (OECD 2006).

Given these economic effects, it is unsurprising that some businesses share these concerns about water pollution. Some major water resources may fall below the standard for industrial use. Further, enforcement campaigns may disrupt businesses and their suppliers due to mass closures, as occurred during the "15 small" campaign in 1996, when the State Council ordered the closure of 57,330 small, highly polluting enterprises in 15 categories (Vermeer 1998). For foreign businesses, pollution is a serious risk to reputation—western market scrutiny may result in negative publicity, such as has surrounded water pollution caused by Chinese joint ventures with global corporations such as Panasonic, Pepsi-Cola and Nestle (Sun 2006). At the same time, foreign businesses may benefit from industry-wide environmental compliance, as they can thereby avoid a competitive disadvantage in terms of the cost of production.

Likewise, Chinese community concern over water pollution is growing. It is manifested through increasing numbers of complaints and protests in relation to pollution, and through the formation of environmental NGOs. According to SEPA, there were 50,000 pollution-related disputes in 2005, and between 2001-2005, environment agencies received 2.53 million letters and 430,000 visits from people requesting redress (Wang A. 2006-07). NGOs aimed at environmental litigation are rare but growing. Two such NGOs are the Center for the Legal Assistance of Pollution Victims (**CLAPV**) and the All-China Environment Federation (Wang A. 2006-07). In other cases, informal community coalitions have brought actions in relation to water quality, for example in relation to the 2005 Songhua River benzene spill, and against a polluting silver-refining plant in Hebei Province (Wang A. 2006-07).

### **Public involvement through seeking legal redress under water quality laws**

Difficulties in implementing and enforcing environmental laws have brought about support for strong public rights in relation to redress for harms caused by pollution as "the key to effective implementation" of environmental law (Wang C. 2006-07a). In 2006 the State Council called for "perfection of the legal assistance system for pollution victims, and research and establishment of an environmental civil and administrative public interest litigation system" (Wang A. 2006-07). SEPA supports environmental NGOs, particularly those that promote their activities as

encouraging "harmonious society" (Li 2006-07; OECD 2006). An individual harmed by water pollution may bring a legal action for redress either as an individual, through an NGO, and/or in a "collective action", which involves over ten plaintiffs. However, this requires adequate access to information (Wang, Kim, and Wang 2006-07).

Access to information provisions exist in China's *Environment Protection Law of the PRC 1989 (EP Law)* and the *Water Law of the PRC 2002 (Water Law)*. Article 16.3 of the Water Law requires that "basic hydrologic materials" be made known to the public. Article 11 of the EP Law requires environmental protection agencies to issue information on the status of the environment. Accordingly, SEPA and some lower-level environment agencies issue annual State of the Environment Reports (OECD 2006). Nonetheless, a 2006 survey of peasants in Guangdong suggested that environmental information is largely inaccessible to them, and that most peasants want more access to such information (Li 2007).

Table 1 sets out several national laws that enable persons whose rights have been directly affected by water pollution to sue for redress. Eliminating pollution hazards and compensation are key remedies in each case.

Table 1. Laws giving rise to public rights to redress for harms caused by water pollution

Law	Relevant provisions
<i>General Principles on Civil Law</i>	Article 124 states "any person who pollutes the environment and causes damage to others in violation of state provisions for environmental protection and the prevention of pollution shall bear civil liability in accordance with the law". Article 134 provides for 10 types of liability, including: cessation of infringement; removal of obstacles; elimination of dangers; restoration of original condition; and compensation for losses.
<i>Environment Protection Law</i>	Article 6 states units and individuals have the right to complain to the state or to take legal action against polluters. Article 41 states "a unit that has caused environmental pollution hazard shall have the obligation to eliminate it and make compensation to the unit or individual that suffered direct losses". This provision applies no-fault liability, that is, plaintiffs need not prove a violation of emissions standards or any other law by the defendant (Wang 2006-07).
<i>Water Pollution Prevention and Control Law</i>	Article 5 states "all units and individuals have the duty to protect the water environment, and have the right to supervise and inform against any pollution or damage to the water environment." Article 55 states "a unit which has caused a water pollution hazard shall have the responsibility to eliminate it and make compensation to the unit or individual that has suffered direct losses". Defences apply.

Individual litigants may face significant obstacles to bringing a case, not least the high costs of litigation. These costs include the "case acceptance fee", discretionary court-imposed "other litigation costs", technical appraisal fees, and the costs of assisting professionals such as scientists (Wang A. 2006-07; Li 2007). Collective actions pursuant to the *Civil Procedure Law 1991* may enable individuals to reduce litigation costs (Wang A. 2006-07). Collective actions have been used successfully in water pollution cases. For example, in 2003, CLAPV assisted 97 fish-breeding families who lived around the Shilianghe River Reservoir successfully to bring an action against a chemical plant and a paper mill in relation to a large fish-kill caused by water pollution. They obtained an injunction, ¥5.6 million in compensation and lawyers' fees (Wang A. 2006-07; Wang, Kim, and Wang 2006-07). However, a recent Notice issued by the Supreme

Court of China and a Guiding Opinion issued by the All China Lawyers Association's (ACLA) may deter collective actions by relegating trials to basic courts (where local influence is strongest), and requiring lawyers to obtain certain approvals to act, and to report any problems to ACLA (Wang, Kim, and Wang 2006-07; Wang A. 2006-07). Judges may also exercise their discretion to separate collective actions, and thereby increase court revenue and their performance statistics (Wang A. 2006-07). Further, local governments may prevent collective actions that are perceived to threaten social stability. For example, a local government edict prevented lawyers from taking on cases relating to the alleged pollution by the Sichuan Chemical Works Group of the Tuo River, a water supply for over 1 million people (Briggs 2006).

If litigants can overcome the initial obstacles of bringing an action, they may find that the outcome of a case is influenced by factors outside its legal merits, such as official policy, the views of local governments, judges' own sense of fairness, and economic considerations (OECD 2006; Wang, Kim, and Wang 2006-07). Local governments appoint and house judges, and control courthouses and court budgets; they may use this power over resources to interfere in decisions regarding liability or levels of compensation (Wang A. 2006-07; Wang C. 2006-07b; Upham 2005). Further, proving causation (where this is required) may be difficult in the absence of sufficient data or scientific assistance, or where pollution harms health in areas where social customs require the destruction of everything related to an individual after their death (Li 2007).

Despite these problems, the approximate success rate of pollution victims who take their cases to court is between 30-40% (OECD 2006). This seems to contrast favourably with more common methods of resolving matters such as complaining to a village committee or to a government institution (Li 2007). For example, popular and low-cost complaints to xinfang ("letters and visits") offices within Chinese government institutions may succeed in only 0.2% of cases (Minzer 2006). While complaining to SEPA is also common, time lags mean that some disputes last over 10 years (Wang C. 2006-07a). The Shilianghe River Reservoir case demonstrates the relative success of litigation. Before bringing that successful action, the plaintiffs had unsuccessfully requested assistance from the local government, SEPA and provincial governments (Wang C. 2006-07a; Wang, Kim, and Wang 2006-07). Further, even if litigation by pollution victims is unsuccessful, other benefits may accrue. For example, an unsuccessful action in Hebei Province in relation to an approval of a polluting silver-refining plant led SEPA to declare that the relevant EIS was invalid, and the plant was shut down (Wang A. 2006-07).

### **The role of multinational business in encouraging compliance with environmental laws**

Foreign businesses occupy a unique position in the context of water pollution in China. They have significant capacity to influence other businesses to comply with pollution laws, both directly, and indirectly, through supporting the public efforts outlined above and acting to increase public awareness and expectations. As outlined above, foreign businesses also have the reputational and economic incentives to play this role.

Some multinational companies have embraced comprehensive public environmental reporting in China, although it is relatively new there and remains voluntary. Alcoa, for example, publishes a stand-alone bilingual sustainability report for its operations in China, which details its environmental strategies, performance and projects (Alcoa China 2006). Such reporting may help to create public awareness of environmental standards as well as models for domestic

businesses. Chinese-owned businesses are increasingly producing sustainability reports—34 did so in the first half of 2007, compared to only 2 in 2005 (Anon 2007). Viewing environmental performance as important to overall performance reflects Chinese government policy. A performance assessment system that includes environmental performance has been announced in relation to the managers of 154 State-Owned Enterprises and local government and Party officials (Fu 2007a, 2007b). Some government agencies also use private enterprise recognition systems such as the Ministry of Chemical Engineering's list of "National Advanced Enterprises for Environmental Protection" (OECD 2006).

Foreign businesses also help to influence domestic businesses and joint venture partners to comply with water quality laws through environment-oriented business groups such as the non-profit business association Business for Social Responsibility, which promotes corporate social responsibility in China, and the China Business Council for Sustainable Development (CBCSD). The latter, established in 2003, aims to be the "leading business advocate" for sustainable development, assist in policy development, and promote exchange and cooperation between Chinese and foreign enterprises on environmental matters (CBCSD 2007). Its 33 members include Chinese companies such as China Merchant Bank, Changling Chemical Refinery Ltd and Hainan Airlines Group, and multinationals such as Rio Tinto, Alcoa Asia, BHP Billiton and Bayer (China) (CBCSD 2007). Foreign businesses also have scope directly to influence the performance of Chinese businesses regarding water pollution by using their buying power to apply environmental standards to their Chinese suppliers (OECD 2006).

Some multinational companies support more widespread environmental compliance by funding environmental NGOs in China. Shell, Manganese Metal and Corning are examples (Economy 2004). Shell (China) Ltd, among other things, sponsors indigenous Chinese NGOs Friends of Nature and Global Village, and supports a 3-year programme to work with small and medium enterprises on biodiversity and renewable energy (Shell 2007). The Alcoa Foundation partners with the China Forum of Environmental Journalists to raise the professional skills of environmental journalists and increase public awareness of environmental issues (Alcoa China 2006). These forms of support from foreign businesses are vital to supporting public involvement in water quality activities – international organisations and corporations comprise about 80% of donations to Chinese charities (Chen, Pan, and Wu 2006).

## **Conclusion**

In addition to direct government enforcement of environmental laws, the Chinese public and foreign businesses have important roles to play in promoting compliance with water pollution laws through legal and other means. Although their role is relatively new in China, NGOs such as CLAPV and Friends of Nature have shown success in environmental litigation. Nonetheless, concerns about obstacles to litigation remain. Foreign businesses may also influence other businesses through creating models for public reporting, business groups aimed at environmental concerns, and supply chain management of potential pollution impacts. Further, their support for NGOs that address water pollution presents a powerful, if unorthodox alliance to help address this major economic, social and environmental concern, while achieving benefits for both parties.

## References

- Alcoa (China) Investment Company Ltd. 2006. China Sustainability Report.
- Anon 2007. "China Sees More CSR Reports", *Business Daily Update* (Financial Times Information Limited), 13 August 2007.
- Blumenauer E. 2004. Asia's Environmental Challenges, Testimony in Hearing before the House International Relations Committee, Subcommittee on Asia and the Pacific, 108th Congress, 22 September 2004.
- Briggs A. 2006. China's Pollution Victims: Still Seeking a Dependable Remedy. *Georgetown International Environmental Law Review* **18**:305-333.
- CBCSD. *CBCSD Members* 2007, cited 27/9/2007 Available <http://english.cbcsd.org.cn/cbcsd/chm/index.shtml>.
- . *CBCSD Objectives* 2007, cited 23/9/2007 Available <http://english.cbcsd.org.cn/cbcsd/objectives/index.shtml>.
- Chen M.Y.-T., Pan L., and Wu H. 2006. Developing China's Non-Profit Sector. *McKinsey Quarterly* (August 2006).
- Chen Z. 2005. Tackling China's Water Pollution Problem: A Legal and Institutional Perspective from Taihu Lake Water Pollution Control *Temple Journal of Science, Technology and Environmental Law* **24**:325-350.
- Economy E. 2004. Asia's Environmental Challenges, Testimony in Hearing Before the House International Relations Committee, Subcommittee on Asia and the Pacific, 108th Congress, 22 September 2004.
- Fu J. 2007a. Green Effort Key to Future of Officials. *China Daily*, 31 July 2007.
- . 2007b. SOE Heads' Careers Linked to Green Targets. *China Daily*, 30 August 2007.
- Klaver I., and Mulkey M. 2006-07. Panel: Regulating China's Water Resources: Perspectives, Concerns, and Responsibilities of Government, Business and the Community. *Vermont Journal of Environmental Law* **8**(2):456-472.
- Li Z. 2006-07. Speech: Environmental Challenges Facing Rural Areas in the Process of Industrialization. *Vermont Journal of Environmental Law* **8**(2):426-434.
- . 2007. Protection of Peasants' Environmental Rights During Social Transition: Rural Regions in Guangdong Province. *Vermont Journal of Environmental Law* **8**:337-376.
- Minzer C.F. 2006. Xinfang: An Alternative to Formal Chinese Legal Institutions. *Stanford Journal of International Law* **42**:103-179.
- Moorman J.L., and Zhang G. 2006-07. Promoting and Strengthening Public Participation in China's Environmental Impact Assessment Process: Comparing China's EIA Law and U.S. NEPA. *Vermont Journal of Environmental Law* **8**(2):282-335.
- OECD. 2006. Environmental Compliance and Enforcement in China: An Assessment of Current Practices and Ways Forward: Organisation for Economic Co-Operation and Development
- . *OECD Environmental Performance Reviews: China*. Organisation for Economic Co-operation and Development 2007.
- SEPA. 2006. 2005 Report on the State of the Environment in China.
- Shell C. *Society and Environment* 2007, cited 27/9/2007 Available [http://www.shell.com/home/content/china-en/society\\_environment/dir\\_socialinvestment\\_1030.html](http://www.shell.com/home/content/china-en/society_environment/dir_socialinvestment_1030.html).
- Sun X. 2006. Multinationals Blacklisted for Water Pollution. *China Daily*, 27 October 2006.
- Upham F.K. 2005. Who Will Find The Defendant If He Stays With His Sheep? Justice in Rural China. *Yale Law Journal* **114**:1675-1718.

- Varis O., and Vakkilainen P. 2001. China's 8 Challenges to Water Resources Management in the First Quarter of the 21st Century. *Geomorphology* **41**:93-104.
- Vermeer E.B. 1998. Industrial Pollution in China and Remedial Policies. *The China Quarterly* **156**:952-985.
- Wang A. 2006-07. The Role of Law in Environmental Protection in China: Recent Developments. *Vermont Journal of Environmental Law* **8**(2):195-223.
- Wang C. 2006-07a. Chinese Environmental Law Enforcement: Current Deficiencies and Suggested Reforms. *Vermont Journal of Environmental Law* **8**(2):159-193.
- . 2006-07b. Keynote: Special Functions of Promoting Public Participation in Environmental Protection in Aiding Pollution Victims. *Vermont Journal of Environmental Law* **8**(2):380-392.
- Wang C., Kim M., and Wang A. 2006-07. Panel: The International Silk Road: Engaging Domestic Efforts to Protect China's Environment. *Vermont Journal of Environmental Law* **8**(2):435-455.
- Wang M., Webber M., Finlayson B., and Barnett J. 2008, in press. Rural Industries and Water Pollution in China. *Journal of Environmental Management*.
- Webber M., Barnett J., Finlayson B., and Wang M. 2006. Managing the Yellow River: Questions of Borders, Boundaries and Access. *Transforming Cultures Journal* **1**(2):114-135.
- Wouters P., Hu D., Zhang J., Tarlock A.D., and Andrews-Speed P. 2004. The New Development of Water Law in China. *University of Denver Water Law Review* **7**:243-308.

Laws:

- Civil Procedure Law of the PRC (effective 9 April 1991).
- Environmental Protection Law of the PRC (effective 26 December 1989).
- General Principles on Civil Law of the PRC (effective 1 January 1987).
- Law of the PRC on Prevention and Control of Water Pollution (effective 11 May 1984).
- Water Law of the PRC (effective 1 October 2002).